H.R. 3764, "TRIBAL RECOGNITION ACT OF 2015"—PART 1 AND 2

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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Wednesday, October 28, 2015
U.S. House of Representatives
Subcommittee on Indian, Insular and Alaska Native Affairs
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 2:48 p.m., in room 1334, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Benishek, LaMalfa, Radewagen, Bishop; Ruiz, Torres, and Grijalva.

Also Present: Representatives Lowenthal and Dingell.

Mr. YOUNG. The committee will come to order. The subcommittee is meeting today to hear testimony following bill, H.R. 3764, the "Tribal Recognition Act of 2015," sponsored by Full Committee Chairman from Utah, Mr. Bishop.

Under Committee Rule 4, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member and Vice Chair and designee of the Ranking Member. This will allow us to hear from our witness sooner, and help Members to keep their schedules.

Therefore, I ask unanimous consent that other Members' opening statements be made part of the hearing record, if they are submitted to the Subcommittee Clerk by 5:00 p.m. today or close of the hearing, whichever comes first.

[No response.]

Mr. YOUNG. Hearing no objections, so ordered.

I also ask unanimous consent that the gentlewoman from Michigan, Mrs. Dingell, and the gentleman from California, Mr. Lowenthal, be allowed to join us on the dais to be recognized and participate in today's hearing.

[No response.]

Mr. YOUNG. Hearing no objections, so ordered.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. This is a bill that would allow Congress to make decisions on the consideration of petitions from groups seeking Federal recognition as Indian tribes. Congress' authority over Indian affairs is established in Article I, Section 8 of the

Constitution. The Supreme Court has held that Congress has absolute authority over Indian affairs, and such an authority is exclusive in nature.

This is the foundation of the bill sponsored by the Chairman of the Committee, Mr. Bishop. H.R. 3764 would give Congress the primary role over actions related to Federal recognition of tribes. Unlike many recognition bills previously considered in this body, this bill provides that the congressional determinations will be informed by the analysis of the Department of the Interior's professional experts.

Today we have but one witness: the Assistant Secretary of Indian Affairs, but it does not mean that this committee's study will be the end of this bill. We will have a second hearing to obtain the views of tribes, tribal organizations, and other experts to discuss this crucial issue concerning Federal Indian policy. This is crucially important to this legislation.

Personally, I would suggest respectfully that this is an attempt to try to make it a level playing field for everyone; and we think this will occur.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF THE HON. DON YOUNG, CHAIRMAN, SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

This is a bill that will allow the Congress to make informed decisions in the consideration of petitions from groups seeking Federal recognition as Indian tribes.

Congress' authority over Indian affairs is established in Article I, Section 8 of the Constitution. The Supreme Court has held that Congress has absolute authority over Indian affairs, and such authority is exclusive in nature.

This is the foundation of the bill sponsored by the Chairman of the Full Committee, Mr. Bishop. H.R. 3764 would give Congress the primary role over actions related to the Federal recognition of tribes. Unlike many recognition bills previously considered in this body, this bill provides that congressional determinations will be informed by the analysis of the Department of the Interior's professional experts.

Today we will have just one witness, the Assistant Secretary for Indian Affairs, but this does not end the committee's study of the bill. We will have a second hearing to obtain the views of tribes, tribal organizations, and other experts to discuss this crucial issue concerning Federal Indian policy.

Mr. YOUNG. I do not see Mr. Grijalva. Is your boss coming?

Mr. Grijalva, will you have an opening statement?

Mr. GRIJALVA. I will let the Ranking Member do that first.

Mr. YOUNG. Well, I would appreciate it if he was here on time.

Chairman Bishop, would you like to have a comment while we are waiting patiently?

Mr. BISHOP. Yes, if Raúl does not want it, I will be happy to take it for you.

[Laughter.]

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. BISHOP. Let me just introduce this bill, if I could, very briefly for you.

In the past, Congress has made designations of tribes that have been done in an inconsistent, unpredictable, and non-transparent manner. Unfortunately, the agencies in the past have also done

recognitions of tribes in an inconsistent, unpredictable, and non-transparent manner.

So, it is very clear that the solution needs to go forward, that the standards—and here, Mr. Chairman, I am actually amenable to what the standards may be, or changing those standards. But the standards should be set in statute, so that everyone knows exactly what those statutes are. The agency would then be responsible to evaluate petitions, make recommendations, but ultimately it would come back to Congress to fulfill the congressional responsibility of actually making the designation.

The Constitution clearly says in the Indian Commerce Clause that Congress has the authority over Indian affairs. And the U.S. Supreme Court as repeatedly instructed that the Constitution grants Congress, not the President, not the Secretary of the Interior, not even the Assistant Secretary for Indian Affairs, plenary and exclusive powers over Indian affairs.

So, what I want to do is to make sure that the issue is that Congress will do its job. It may be cumbersome, it may be uncomfortable, but it is congressional responsibility. The standards should be set, they should be open, they should be clear, they should be in statute, and then we move forward with that.

I also want to say one thing as we move toward the future, that many in our agencies and in the Administration have a mind-set that is stuck in the late 1800s. In the 1800s, Max Weber was very confident in saying there should be a separation of authority between administration, and then get rid of that ugly politics that was part of it, so that the Administration could be done in a clear, simple, scientific manner. The only problem with that is that is not the way the real world works.

The Administration, even if they had the responsibilities, are still ripe with biases, unpredictability, as they go through the Byzantine backdoor alleys in making a decision. The politics that were supposedly removed is the only way people get a voice in the process. If you remove that, and just have the Administration making those decisions, you don't like it, tough. There is no other way to do it.

It is through politics, people, elected officials—that means the House and the Senate—where they actually have contact with them, that is where the people's voice is actually heard. If we are going to move into the 21st century on this issue, as well as others, we have to mirror those back together. So, the politics and the Administration come back into one, so the people have a chance to actually be heard in this particular process as we move forward.

What we have to do is move to 21st century solutions, not be stuck in the mind-set of the 1800s, and have Congress do what Congress is constitutionally required to do, make sure the legislative authority rests within Congress and will not be transferred, either by us or usurped by anybody else, into any other branch of government.

The details of how these standards are? I am still open and amenable. But that Congress has to be the one making this decision, that is the philosophy.

I appreciate that. I hope I took enough time, so that the Ranking Member had a chance to get here and get his breath.

Mr. YOUNG. I do appreciate the gentleman's sacrifice in taking the time necessary to get the Ranking Member here. So you shall be rewarded.

Mr. Ruiz, you are next.

STATEMENT OF THE HON. RAUL RUIZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. RUIZ. Thank you, Mr. Chairman. I would like to thank our sole witness today, Secretary Washburn, for coming back to our subcommittee once again to share the Administration's views. And while I do appreciate speaking with the Secretary, I am very concerned that there are no tribal leaders here today to provide their views on a bill that affects their very sovereignty and self-determination. I urge and advocate for tribal leaders to share their views on H.R. 3764 in this committee at a later date.

Mr. Chairman, H.R. 3764 will take away the Secretary of the Interior's authority to acknowledge tribes, and places it solely in the hands of Congress. In other words, it will consolidate power to recognize tribes in the hands of a few—namely, the Chairman of the Natural Resources Committee and the Speaker of the House—because the Chairman of the Committee determines what legislation gets and does not get a hearing or a mark-up, and the Speaker of the House decides which bill may be or may not be considered on the House Floor.

Today the Federal acknowledgment process applies a more non-partisan, open, transparent, evidence-based approach in implementing fair and legal solutions to right the wrongs performed by the Federal Government and Congress toward Native Americans. While the process can be improved, it is at least more objective and evidence-based.

H.R. 3764, on the other hand, would infuse partisanship and politics into the recognition process by only allowing Congress to acknowledge Indian tribes. This places the lives and future of Native Americans in the hands of a dysfunctional, hyper-partisan Congress. It moves away from Native American self-determination and toward politicians' self-interest.

For decades, tribes and lawmakers have called for changes to the Part 83 process to make it more standardized, more transparent, and efficient. The provisions in this bill will most certainly make the process more arbitrary, non-transparent, and drawn out.

First, while tribes and this committee have criticized the old Part 83 process as broken and cumbersome over the past 15 years, this bill codifies the majority of that same process. Going backwards to the old problematic process and expecting a different result is just not smart.

Furthermore, the bill mandates no timeline on action on behalf of Congress to act on any of the recommendations provided by the Department of the Interior; just report to Congress, it says. That is it. No provision or timeline for Congress to act. It just leaves the entire issue in limbo.

In fact, there is no requirement that a petitioner even has to go through the process at Interior, making it a better option just to bypass the expense, time, and rigor of the Part 83 process altogether, and go straight to a Member of Congress and, ultimately,

to the Chairman of the Natural Resources Committee. This leaves me to wonder exactly how this new process will in any way be more standardized or efficient.

Next, the bill turns an objective, transparent process based on science and evidence to one negotiated perhaps behind the scenes and influenced by political and special interests with the ear of the Chairman and the Speaker. Included in the current process are public notices, updates, and public input.

Under this legislation, those would only happen if a tribe chooses to go through this process; and, even then, the final decision can be made behind closed doors.

For example, outside interests could lobby for limitations to be added as a condition of sovereignty. These could be anything: like land use, tribal enrollment limits, taxation provisions, and the list goes on and on. The pressure from local constituencies and special interests, people and groups that may be anti-tribe or anti-sovereignty, could result in a watered-down sovereignty with many conditions and hindrances.

Self-determination is difficult enough today without these types of unwarranted limitations. But since the only avenue for recognition will be an Act of Congress, tribes will be forced to accept these politically-motivated conditions.

Third, I, and many in Indian country, am also very concerned at what is meant in this bill by "lawfully" recognized tribes. Does this bill suggest that there are unlawfully recognized tribes?

In conclusion, the Department of the Interior's Part 83 process at least provides a non-partisan, research-based approach to determining the validity of tribal claims. Taking that avenue away will consolidate power in the hands of the Chairman of the Natural Resources Committee and the Speaker of the House, resulting in even further delays and difficulties and leaving tribal recognition decisions victim to political whims and outside influence.

I look forward to the testimony from our witness today, and learning more about the intentions surrounding this legislation. Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Dr. Ruiz follows:]

PREPARED STATEMENT OF THE HON. RAUL RUIZ, RANKING MEMBER, SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

Thank you, Mr. Chairman. I'd like to thank our sole witness today, Secretary Washburn, for coming back to our subcommittee once again to share the Administration's views. And while I do appreciate speaking with the Secretary, I am very concerned that there are no tribal leaders here today to provide their views on a bill that affects their very sovereignty and self-determination.

We must ever be vigilant to avoid repeating historical wrongs against tribes, and the best way we can accomplish this is to have tribal leaders at the table. I only hope that we can remedy this oversight by having a chance for tribal leaders to share their views at a later date.

Mr. Chairman, the result of this legislation is clear: H.R. 3764 will take away the Secretary of the Interior's authority to acknowledge tribes, in order to consolidate that power in the hands of a few—namely the Chairman of the Natural Resources Committee and the Speaker of the House. Now, many may argue that it is Congress that is deciding, but the fact is that the Chairman of the Committee determines what legislation can get a hearing and mark-up, and the Speaker of the House decides which bills may be considered on the House Floor.

Today, the Federal acknowledgement process applies a non-partisan, open, transparent, evidence-based approach in implementing fair and legal solutions to right the wrongs performed by the Federal Government and Congress toward Native

Americans. While the process can be improved, it is at least objective and evidenced based, and has resulted in the re-establishment of government-to-government relationships with 18 tribes to date.

H.R. 3764 would infuse partisanship and politics into the recognition process by only allowing Congress to acknowledge Indian tribes. One only has to look around at the dysfunction in Congress today, as evidenced by the fact that only 1 out of 74 bills referred to this committee has been signed into law throughout the entire year, to see that this is not a path forward. And that this makes tribal recognition more about the self-interest of a few politicians, rather than self-determination and sovereignty of legitimate tribal nations.

For decades, tribes and lawmakers have called for changes to the Part 83 process to make it more standardized, transparent, and efficient. The provisions in this bill will almost certainly make the process more arbitrary, secretive, and drawn out.

First, while tribes and this committee have criticized the old Part 83 process as "broken" and "cumbersome" over the past 15 years, the bill codifies it with almost no improvements. Going backwards to the old problematic process and expecting a different result is just not smart.

Furthermore, the bill mandates no action on behalf of Congress to act on any of the recommendations provided by the Department of Interior. And after completing this enormously expensive process, the only requirement at the end is that Interior must submit a report of their findings to the House Committee on Natural Resources and the Senate Committee on Indian Affairs. That's it. No provision or timeline for Congress to act on Interior's recommendation. It just leaves the entire issue in limbo.

In fact, there is no requirement that a petitioner even has to go through the process at Interior—making it a better option just to bypass the expense, time, and rigor of the Part 83 process altogether and go straight to a Member of Congress and ultimately to the Chair of the Natural Resources Committee. This leaves me to wonder exactly how the new process will in any way be more standardized.

Next, the bill turns an objective, transparent process based on science and evidence, to one negotiated behind the scenes and influenced by special interests with the ear of the Chairman and Speaker. Included in the current process are public notices, updates, and public input.

Under this legislation, those would only happen if a tribe chooses to go through this process, and even then, the final decision will be made behind closed-doors with no accountability.

For example, outside interests could lobby for limitations to be added as a condition of sovereignty. These could be anything—land use, tribal enrollment limits, taxation provisions . . . the list goes on. The pressure from local constituencies and special interests—people and groups that may be anti-tribe or anti-sovereignty—could result in "watered down" sovereignty with many conditions and hindrances.

Self-determination is difficult enough today without these types of unwarranted limitations. But since the only avenue for recognition will be an Act of Congress, tribes will have no choice but to accept these political motivated conditions.

Third, I, and many in Indian country, am also very concerned at what is meant in the bill by "lawfully" recognized tribes. In fact I would like to give Chairman Bishop an opportunity to explain just what he means by this. Do you believe that any of the 18 tribes recognized through the Department's Part 83 process were "unlawfully" recognized? Because the bill certainly seems to imply this.

In conclusion, many tribes have still not established or reaffirmed their relationship with the Federal Government. The Department of Interior Part 83 process, even if we could still improve it, provides a non-partisan, research-based approach to determining the validity of tribal claims. Taking that avenue away will consolidate power in the hands of a few members, resulting in even further delays and difficulties and leaving tribal recognition decisions victim to political whims and outside influence.

I look forward to the testimony from our witness today and learning more about the intentions surrounding this legislation. Thank you Mr. Chairman, and I yield back.

Mr. YOUNG. I thank the gentleman. I can assure the gentleman that this is a hearing, but we will change the way the process works, because we do believe, and I believe, that the will of the Secretary, which changes at each administration, is not a good way to do business. This is the house of the people, not the house of the

Administration. It is our responsibility, under the Constitution—it is very clear—that Congress makes these decisions.

Now, it does not mean that we cannot improve on this legislation, where the Interior Department can make recommendations. We have to decide whether we vote on it or not vote on it. And that is something that meets the criteria, it is what I call more transparent.

I know exactly what—I believe my 15th Secretary of Indian Affairs—they all had a difference of opinion. No one knows where they were going. This is why we are having this hearing—it is a hearing. And, as Mr. Bishop has said, this is what we are going to work on.

Now, for the Members, we have a 15-minute vote on, and then a rule vote for 5 minutes. I wonder how much time we have left.

Would you like to have 10 minutes' discussion from the witness, and then we come back, or what is your pleasure? OK. I would say let's plan on meeting here around 3:25 p.m., if that works out.

[Recess.]

Mr. YOUNG. The committee will come to order. I think we are all in agreement we are going to go forth with our witness. And everybody knows the rules. Kevin, you should know them better than anybody else. We will have your testimony, and I will be somewhat lenient if you would like to extend that 5 minutes to a little longer. I will grant that to you. Do not make it too long.

So, Kevin, you are up, and then we will go through a series of questions.

STATEMENT OF KEVIN WASHBURN, ASSISTANT SECRETARY OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. WASHBURN. Thank you, Chairman, Ranking Member, Chairman Bishop, and other members of the committee. It is a real pleasure to be here once again to debate an important aspect of Federal Indian policy.

Tribes today continue to face tragic problems: high suicide rates among Native youth, high rates of domestic violence, high rates of sexual assault of women and even children, poor levels of education, crumbling Federal and tribal schools, and the loss of sacred landscapes. The Obama administration has worked very hard not only to increase funding to address many of these serious tribal problems, but also by supporting tribes to develop their own tools to address those problems.

For example, we have taken a lot of lands into trust, and we are fixing the allotment fractionated interest problem with Congress' help through the Cobell settlement. Next week, the President will be inviting tribal leaders to Washington for the annual White House Tribal Nations Conference, and this is the seventh time the President has invited all the tribal leaders to Washington to consult with them on the matters that are important to them.

Frankly, that is how we get our marching orders. That is where we get them, we get them from Indian country. Whenever you hear me say anything, I am usually trying to pair it with what Indian country has told me, because that is my job. I am their advocate, and they are my constituents.

I appreciate Chairman Young's statement at the beginning, that this issue is going to take a lot of the committee's time. But I would respectfully urge the committee to work on some of these other issues that I have just highlighted that are so important to Indian country. Including with those: subsistence rights and taxation issues. We would love to have a lot more laws like the Hearth Act, which was passed in a bipartisan way by Congress in 2012, laws that respect tribal sovereignty and put more control in the hands of tribes. We would love to see a lot more focus on laws like that, that we can all agree on.

Let me turn respectfully to the bill before the committee today, H.R. 3764. The Obama administration has a lot of experience with congressional recognition, including formally recognizing two tribes, the Shinnecock Tribe of Long Island, New York, and, more recently, the Pamunkey Tribe of Virginia.

Let me say first, that since treaty times the Administration, the President, has had a real role in recognizing tribes. Early presidential administrations had to figure out who to go talk with to come up with proposed treaties to bring back to the Senate for ratification. So, since the very beginning of our republic, it has been the executive branch that has had a significant role in recognizing not just foreign nations, but also tribal nations.

And we have done it—it has changed over the years, but that has been an executive power for all this time. And, frankly, it is a small minority of tribes that have ever been congressionally recognized. Most of them have been recognized by the executive branch or through treaties, and very few of them formally by all of Congress.

We have spent the last 3 years especially working on this issue, looking carefully at our old set of regulations, and working to improve them. Why did we do that? We did it because we heard a lot of people say that the old process was broken. If you are wondering who called it broken, your counterpart on the Senate side, Lisa Murkowski, looked at the process in 2009 and said that the process is one that just does not work.

Indian Affairs Chairman, current Chairman, Senator John Barrasso, said that the process needs reform and needs to be fixed. He said that in 2012. And way back in 2004, Republican Chairman of the Senate Indian Affairs Committee, Ben Nighthorse Campbell, described the process as having inequities, and said that most people admit that it is badly broken. And Chairman Young himself, on the House Floor in 1998, nearly 20 years ago, called the process, "slow, cumbersome, and enormously expensive."

By the way, there are lots of other people who have made comments calling the system broken; those are just some of the Republicans that I quoted. We felt that we could not ignore all the people who have criticized the process, and we set about to reform that process. It is very important to have a process that has public trust, so we reformed our rule. We adopted a lot of improvements, none of them radical, all of them evolutionary, rather than revolutionary.

What I find troubling about H.R. 3764 is that it has adopted the old version of the rule that so many people describe as broken, and is now seeking to codify that old broken approach in the law. H.R. 3764 omits all of the improvements that we have made; they

are not in there. I would be happy to explain those in response to questions.

But let me get to something even more concerning, and that is this: H.R. 3764 has some very troubling language regarding existing recognized tribes, and places them at serious risk for litigation. The United States has recognized, as I think I said, 566 tribes already, and also recently recognized the 567th, the Pamunkey Tribe of Virginia, which is still in the administrative appeal process.

In Section 11 of the bill, H.R. 3764 says that an Act of Congress is required for tribes to be acknowledged. It then says that the bill does not affect the status of tribes that were lawfully acknowledged prior to the date of this Act. If you read that quickly, you might think that this means that H.R. 3764 will have only prospective effect.

But here again, I have real questions about the way it is drafted. The bill does not say that all of the 566, or 567 tribes including Pamunkey, are currently acknowledged, lawfully acknowledged. It does not acknowledge them as legitimate. It says only the tribes that were lawfully acknowledged by the United States are currently unaffected by this Act if it passes. In other words, it implies that there is a question as to which of those 567 tribes are lawfully acknowledged.

This language gives me a knot in my stomach, primarily because of this committee's own recent history. In a hearing last spring, the committee raised significant doubt about the legitimacy of some of those tribes, and the Federal Government's recognition of those tribes, and also about the lawfulness of our processes at Interior. The committee clearly has expressed doubts about many of those 566 or 567 tribes. There are well over 30 tribes the Department has formally recognized since 1960, through Part 83 or related processes that pre-dated Part 83, including 17 that the United States has recognized under the formal Part 83 rules. Under the language that is in this bill, if this bill passes, then every one of those tribes is at risk, because they are not congressionally recognized.

Frankly, Chairman, the bill raises issues about the 229 tribes in Alaska. In a hearing memorandum dated September 26, 2015, this committee wrote that the status of all the Indian tribes in Alaska has been the subject of dispute. We had a witness in here who talked about his real concerns about the lawful acknowledgment of those tribes. So, the bill may well have the effect of terminating the acknowledgment of those 229 tribes and forcing them to go back through this system to get Federal congressional acknowledgment if this bill passes.

In the same September 26 memo, the committee criticized the Department for recognizing tribes outside the regulatory process, and it pointed to 17 California rancherias involved in the so-called Tillie Hardwick legislation. Those tribes were recognized through litigation settlements, and those also have not been subject to congressional recognition.

That gives me great pause, that there are some tribes that may not meet the terms of this bill, and may not be legitimate if this bill passes. At the very least it creates significant doubts about their legitimacy. That might be good for lawyers, but it is not good

for economic development for tribes, because they are not going to get people willing to finance their operations and their work if they have doubts about their legitimacy.

We have been down this road before with Carcieri. The Supreme Court gave us the gift of Carcieri, but this would be Congress giving us this gift of uncertainty and creating litigation.

So, I am here to tell you that the Obama administration remains firmly committed to protecting and restoring Indian lands, and continuing to use their rational, rigorous procedure to acknowledge tribes. We think H.R. 3764 is a big step backward.

Chairman, I am way over time, but I would like to address just one matter that Chairman Bishop raised, if that is OK. If I could briefly comment on his statement about congressional power. Chairman Bishop suggested that this system we have seems to be like a system from the 1800s. I would actually respectfully quibble with Chairman Bishop's history. To me it is more of a New Deal-era type model.

In the New Deal, we used expert agencies to start making difficult and complex decisions, and Congress had delegated power to them. To me, that is kind of what is going on here. We have this Office of Federal Acknowledgment filled with master's and Ph.D.-level scientists who do the work to figure out whether to acknowledge folks. It is not a very political process, it is a very scientific process, and it is a process that we have great confidence in. It does not move very fast. And, frankly, it is a process that is very, very, rigorous, but it ultimately gets to an up or down decision on groups that seek recognition.

One of my concerns is that a decision that goes before Congress—someone might never get an up or down decision. It might just come over here and just hang out there, and no one ever gets a firm no or a firm yes. And if they get a firm no from us, they can litigate that, they can get due process about that. Congress would not present that opportunity, because you cannot litigate against Congress for those sorts of things.

So, the bill gives me great concern, and I would be happy to answer any other questions about the bill. I appreciate the committee's patience in letting me go way over on time.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF KEVIN K. WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Young, Ranking Member Ruiz, and members of the subcommittee. My name is Kevin Washburn, and I am a member of the Chickasaw Nation of Oklahoma, and currently serve as the Assistant Secretary—Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration's view on Chairman Bishop's bill, H.R. 3764, a bill to provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes. The Administration strongly opposes H.R. 3764.

H.R. 3764

As introduced last week by Chairman Bishop, H.R. 3764 appears to codify in large part regulations promulgated more than 20 years ago that were widely criticized as having resulted in a "broken" recognition process that took decades to complete. H.R. 3764 would further slow that broken process by delaying a decision on recognition until Congress acts on a report received by the Department. As H.R. 3764 was only introduced a week ago, the Department has not had time to

do a complete analysis of the Bill. This statement reflects our larger overarching concerns with H.R. 3764.

A significant concern is that H.R. 3764 casts doubt on the status of tribes that have already been recognized by the Federal Government. The Department's current regulatory process draws a bright line—it does not apply to tribes "already acknowledged as Indian tribes by the Department." H.R. 3764, by contrast, states only that it does not apply to those tribes "that have been lawfully acknowledged to be federally-recognized Indian tribes." Use of the term "lawfully" seems to imply that some tribes have been "unlawfully" federally acknowledged. This past spring the subcommittee held a hearing in which doubts were raised about the lawfulness of recognition by the Department of the Interior. The bill seems to embrace such misguided thinking and places tribes at risk for litigation as to their lawful recognition. The Administration strongly opposes legislation that purports to terminate or call into question the status of any of the existing federally-recognized tribes.

THE DEPARTMENT'S EFFORTS TO REFORM THE PART 83 PROCESS

As the subcommittee is aware, on April 22, I provided an overview of the Department's efforts to improve the Department's Federal acknowledgment process. These efforts began in 2009 when Secretary Salazar and others in the Administration testified before the Senate Committee on Indian Affairs on our work to reform the process. I began working on this issue almost as soon as I undertook my position as Assistant Secretary. In March of 2013, I testified before this committee on the progress the Department had made to identify guiding principles of improvement: transparency, timeliness, efficiency, and flexibility. We also shared our path forward—issuance of a discussion draft of potential changes in the spring of 2013, consultation and public input on the discussion draft, and then preparation of a proposed rule, followed by another round of consultation and public input on the proposed rule.

The Department released a discussion draft on June 21, 2013, and announced public meetings and tribal consultation sessions. Throughout July and August 2013, the Department hosted tribal consultation sessions for representatives of federally-recognized Indian tribes and separate public hearing sessions for interested individuals or entities at five locations across the country.

During these sessions, serious efforts were undertaken to capture meaningful comments on our discussion draft and other suggestions for reform. A professional court reporter transcribed each session. The Department made the transcripts available on its Web site and posted each written comment it received also on its Web site. At the request of states, Indian tribes, and others, the original comment deadline of August 16, 2013, was extended to September 30, 2013, to allow additional time to provide input. Tribal and public engagement at this stage of the reform initiative was incredibly robust. Commenters submitted more than 200 unique written comment submissions but, in total, more than 4,000 commenters provided input through form letters and signed petitions.

When the comment period on the discussion draft closed, the Department's internal workgroup began reviewing each written and oral comment on the discussion draft. During this review process, which also involved regular team meetings, our workgroup began to formulate a draft proposed rule. Prior to publication, the draft proposed rule was reviewed by OMB and Federal agencies.

On May 29, 2014, the Department published the proposed rule in the *Federal Register*. The publication also announced that the Department would be hosting additional tribal consultation sessions and public meetings at six locations across the country in July 2014. In response to requests for extension, the Department extended the original comment deadline of August 1, 2014, to September 30, 2014. In response to requests for additional meetings at additional locations, the Department announced the addition of two more tribal consultation sessions and two more public hearings to be held by teleconference in August and early September of 2014. The Department again made transcripts of all sessions available on its Web site and made all written comments available on www.regulations.gov. Tribal and public engagement was again robust. Commenters provided more than 300 unique comment submissions on the proposed rule, and more than 3,000 commenters provided input through signatures on form letters or petitions.

Once the comment period on the proposed rule closed on September 30, 2014, the Department's internal workgroup reviewed each of the written and transcribed comments on the proposed rule and drafted the final rule. The internal workgroup included representatives of the Office of the Assistant Secretary—Indian Affairs, OFA, the Office of the Solicitor, the Office of Hearings and Appeals, and the U.S. Department of Justice. The comments provided were extraordinarily helpful to

the Department as it drafted a final rule. Just as the proposed rule was the product of extensive comments on the discussion draft, the final rule reflects additional changes following comments on the proposed rule. As I previously testified, the work of this committee and the Senate Committee on Indian Affairs in previous Congresses was extraordinarily helpful to inform our thinking as we moved forward with the final rule. The final rule that was ultimately published, and that became effective July 31, 2015, reflects years of intensive input from thousands of commenters and makes significant improvements to transparency, timeliness, efficiency, and flexibility.

In summary, our efforts to obtain tribal and public input have been more robust than our process for any other rulemaking in the last 6 years. We have held 22 meetings (11 tribal consultations and 11 public meetings) and 4 nationwide teleconferences. Over the past 2 years, we have received thousands of comments on this regulatory initiative, including comments from states and local governments, federally-recognized Indian tribes, inter-tribal organizations, nonfederally-recognized tribes, and members of the public. H.R. 3764 ignores the public comment on our rulemaking and embraces the process that has been widely perceived as "broken."

IMPROVEMENTS TO THE PART 83 PROCESS

The current rules implement significant improvements to the process, none of which are included in H.R. 3764. For example, the regulations provide for greater transparency by increasing public access to petitions and by increasing notice of petitions. The current rules promote timeliness and efficiency by providing for expedited decisions and a uniform evaluation start date of 1900. The rule also promotes fairness and objectivity by ensuring a consistent baseline of the criteria based on previous determinations. The current rule also promotes due process, transparency and integrity by providing for a hearing process before an Administrative Law Judge before a final decision is issued. H.R. 3764 does not implement these reforms or any reforms to promote fairness, flexibility, efficiency or to improve the transparency of the "broken" process.

CONCLUSION

I would like to thank you for the opportunity to provide the Administration's views on H.R. 3764. I will be happy to answer any questions the subcommittee may have.

Mr. YOUNG. OK, Kevin, I hope you appreciate the Chairman's patience. Ten minutes is a long time.

Mr. WASHBURN. Thank you.

Mr. YOUNG. Mr. Ruiz.

Dr. RUIZ. Thank you, Mr. Chairman.

Mr. Secretary, the bill includes that very alarming provision that seems to call into question the lawful Federal recognition status for some tribes. As in my opening statement, I stated this suggests that there may be some unlawful tribes out there.

Could you elaborate on the adverse effects that could cause on any of the tribes?

Mr. WASHBURN. Yes, Ranking Member. Thank you, Dr. Ruiz. The problem is that the bill, and the committee's own past hearing memos, call into question the existence and legitimacy of some tribes. I will tell you that the tribes involved in the Tillie Hardwick litigation would be at some risk, because the committee itself has called them out as being of questionable legitimacy because they do not have a congressional act recognizing them. And that is—Big Valley Rancheria, Blue Lake Rancheria, Elk Valley, Chicken Ranch, Cloverdale, Greenville, Mooretown, North Fork Rancheria, Picayune, Pinoleville, Potter Valley, and it goes on. I could read a much longer list. Those tribes are all at risk if this bill passes, and I think that they are probably concerned when they see this bill.

Dr. RUIZ. I think that, if I could ask a point of clarification from the author of the bill, if that is OK, to Chairman Bishop—is that OK?

Mr. YOUNG. You can ask him; he does not have to answer.

Dr. RUIZ. Of course. So, Chairman Bishop, do you consider the 18 tribes that the Department of the Interior has recognized since 1978 to be lawfully recognized tribes under this bill?

Mr. BISHOP. Well, let me give you the hypothetical back. Do you consider there are any tribes that have been unlawfully recognized?

Dr. RUIZ. What is that?

Mr. BISHOP. Do you consider any tribes have been unlawfully recognized?

Dr. RUIZ. That is my question. That was my question to you.

Mr. BISHOP. No, that is the question—the same thing. It is part of the question to him. If he is complaining about lawfully, are there unlawfully recognized tribes? Is that what you are saying?

Dr. RUIZ. No. My question to you, Mr. Chairman, is that in your bill——

Mr. YOUNG. Let's just stop that, and ask the witness.

Dr. RUIZ. OK.

Mr. YOUNG. OK.

Dr. RUIZ. Let me—may I——

Mr. BISHOP. I only took 30 seconds of your time. I am sorry; I was prepared to go longer.

Mr. WASHBURN. Thank you, Dr. Ruiz and Chairman Bishop. I would say that the Obama administration believes that every one of the 567 tribes is lawfully recognized. I would say that the bill creates some real ambiguity about that question, though.

Again, you just need to look at the committee's own hearing memos to see that there is ambiguity created in those memos. If this bill passes the way it is written, those tribes may very well have to litigate whether they are legitimate. The Obama administration would defend them, but this bill would subject them to litigation, potentially.

Dr. RUIZ. I think that is why it is important that we have clarification from the writers of the bill that can tell us—do the 567 recognized tribes match the definition of being lawfully recognized?

And I know you will answer later, unless you want to answer now. Sure, I will yield.

Mr. BISHOP. Look, I appreciate the concept. You have memos. They are not the same thing as statute. We want to clarify everything in statute—if you don't have any fear that anything was unlawfully done.

What I would like to do, we are going to have another hearing, obviously, when we bring the Native Americans in.

Dr. RUIZ. OK.

Mr. BISHOP. That is the question I want to ask of them. If they have an issue with that, then we revisit it.

Dr. RUIZ. OK.

Mr. BISHOP. I would like to actually listen to the Native Americans themselves, get some testimony toward that. Nothing personal, but I want to hear from somebody else.

Mr. WASHBURN. Chairman Bishop, I am a member of the Chickasaw Nation of Oklahoma. I am a Native American. But I do believe you should have some tribal leaders at this table to testify, I agree. Thank you.

Dr. RUIZ. Mr. Secretary, during the process of coming up with your new Part 83—which, you know, we could still improve on, but it is what you came up with—can you describe the input that you received from Congress, and how you incorporated that information into that decision?

Mr. WASHBURN. Yes. Thank you, Dr. Ruiz. We looked at past congressional bills. There have been a lot of bills that have been filed over here that have never been enacted. So we looked at that input.

We received comments from over 4,000 people on our discussion draft, and we received comments from over 3,000 people on our proposed rule. We looked at all of those comments. Thankfully, some of them were repetitions of other comments. But we looked at all of them, and that is how we made our process.

I will say that I was a little bit surprised. I am impressed that Chairman Bishop was able to keep this under wraps, but it was like legislation by ambush, because I never even knew you were working on this bill. So I am impressed that you were able to keep it under wraps in a place like this. But we have heard a lot of information from a lot of experts, and we could have certainly helped with the drafting.

Dr. RUIZ. How did you incorporate the Congress' input into the new Part 83 that your Department came up with?

Mr. WASHBURN. Well, we tried to deal with the very criticisms that we heard from Congress, that it was too cumbersome, for example. And this bill, I think, would make it more cumbersome, because even after we do all of our work, then it has to come over here for action. So it does not seem consistent with the criticisms that we have heard of the bill.

This bill adopts the old version of the rule, the old broken process that people said was broken. That is the one that has been adopted in this bill. And I understand Chairman Bishop's concern—that he is not so concerned about the details, he just wants Congress to have this. But the details in this work really matter. It really is about details, and it is detailed work.

Mr. YOUNG. I would suggest one thing. Again, this is a hearing. And it is to look for improvement in this legislation. I think that is what we are going to attempt to do. I expect to do it.

I will just go back through history, Kevin. One of my frustrations was when Ada Deer, without consultation with anyone, including the tribes, made 229 tribes by a stroke of the pen. She sat right where you are, with no input from anybody. What she was trying to do was break down the Alaska Native Land Claims Act by creating all the tribes, within the tribes. That was the frustrating thing, and that is the thing I really have not appreciated from any of the secretaries having the latitude of being able to do something without consultation with anybody.

Now, it has been created. Fine. Do they like it? Maybe. But they were not even consulted. Just because you—not you, but that seat—did it. And that is my interest in this legislation.

Mr. LaMalfa, I believe you are next.

Mr. LAMALFA. Thank you, Mr. Chairman. I cannot let go by earlier what the Ranking Member was saying about the process becoming such a closed, political—I mean this is the founding principles that the country was named on, that we have 435 in the House of Representatives that represent 700,000 people and come together, as we just did off the Floor a while ago, casting votes in the full light of the public here. That is the process, and we are working through the process. The Chairman is going to see to that, that we are having one. So, I was disappointed in those comments earlier, that instead of vesting that in an executive branch to make decisions, that—go counter to what my questions are going to be about, and I am kind of disappointed by that.

So, moving on, thank you, Mr. Washburn, for showing up today, for being with us. Looking back, the genesis of this bill kind of grows out of what I would point out, a document called, "The Highlights of the Final Federal Acknowledgment Rule," released with the final recognition rule in June. The BIA states—and I quote—"Any petitioner that was previously denied Federal acknowledgment in this process may not re-petition." Does this accurately state today your position that denied these tribes that they may not re-petition?

This is what that document looks like, right here, so——

Mr. WASHBURN. Yes, sir. I know the document. Thank you, Congressman LaMalfa. Yes, there was a lot of discussion about that in our review process, about whether we should allow groups that have gone through the process and failed, whether they should be allowed to re-petition. Those groups have the right to come to Congress to ask you, because you certainly do have the power to recognize tribes, if you wish. In fact, you have a couple of bills sitting before this committee to recognize six tribes in Virginia and one tribe in Montana. So, this committee and Congress have the ability to recognize tribes.

But what we have said is that if they have failed in our process, at this time they cannot re-petition, because we have a lot of groups that we have not reviewed for the first time. So, we certainly need to go through all of those groups before we are going to allow any groups that have already gone through the process once to come back at the process.

We have said that there should be no re-petitioning, at least at this time, for acknowledgment from our process.

Respectfully, let me just address the first thing that you were concerned about. This is the people's house, and it has a very important role to play. But you all have a lot on your plate. We still do not have a budget. Our fiscal year started 3 weeks ago, and we still do not have a budget. And that is something that affects everybody, nationwide. Acknowledgment is a very important activity, but it tends to affect regional interests only. We have experts that can do that work, and leave you to the very important work which, frankly, is——

Mr. LAMALFA. Well, this is all important work.

Mr. WASHBURN [continuing]. Not going so well.

Mr. LAMALFA. I need to reclaim my time. I am sorry, but because there is an inconsistency. That is what I will follow up with here—

is that your office sent a letter informing a group in California that its petition could be considered under new rules. This group had been formally denied recognition by the BIA in 2011 under this document here. It is probably hard to see from that distance, but it goes back to 2011, and it was reprocessed again here on August 31.

It also had its appeal denied by the IBIA in 2013. So, again——

Mr. WASHBURN. What is the name of the group?

Mr. LAMALFA [continuing]. It appears that you are acting as if these never occurred in this new policy that you just a minute ago said you do not revisit old denials.

Mr. WASHBURN. I am sorry, Congressman, what is the name of the group?

Mr. LAMALFA. Well, it is a Southern California tribe. I do not really want to name names here today, but they have reapplied. And——

Mr. WASHBURN. Well, we don't——

Mr. LAMALFA [continuing]. It shows to me a bigger issue of inconsistency of what you just asserted would be the rules, and now people can come back outside of that rule and reapply once again.

Mr. WASHBURN. Well, like I said, we have changed our rules. We now allow—beginning earlier this year, we have said there is going to be no more re-petitioning. We have closed that down, and we have actually closed all other routes to get recognition, because there have been some other case-by-case approaches that we have closed down.

We now have one very rigorous process for tribes to go through, and that is a new development. That is what we did with our rule. We made it clear that everybody—and fair. Every group has to go through the exact same process. So I do not know which group it is you are referring to, but the policy did change this year. It is now the policy of no re-petitioning.

Mr. LAMALFA. So anything that may be in the pipeline would now be considered over?

Mr. WASHBURN. Well, I don't know. I do not know the specific circumstances of the specific cases——

Mr. LAMALFA. OK. Well, I need to yield back, Mr. Chairman, but we will visit that later. Thank you, sir.

Mr. YOUNG. Mr. Chairman? Ranking Member?

Dr. RUIZ. Go ahead, Norma.

Mr. YOUNG. No, no, no, no.

Dr. RUIZ. Oh, yes. He is going to defer to Norma.

Mr. YOUNG. You are up.

Mrs. TORRES. Thank you, Chairmen Young and Bishop, and thanks for the opportunity to be repetitive here. I know you have been around quite a bit, quite long. I am the new Member here, so I am going to probably ask some of the same questions.

Absolutely, this is Congress, and the people's house. And Congress has exercised its plenary power and delegated the authority to recognize tribes to the Department of the Interior. Over the years, Congress has repeatedly asked the Department to fix the broken Part 83 process.

Can you describe for me some of the changes the Department has recently made, particularly regarding transparency, and how those

changes that you have made are implemented or reflected on this bill?

Mr. WASHBURN. Yes, Madam Torres, thank you for the question. We really did hear from you, from Congress, and from people out there that our old process was not very transparent. So, we made real efforts to increase the transparency. People felt like it was a little bit of a black box, that information goes in, and then an answer pops out. We are really trying to change that.

So, one of the things we have done in our new regulation is require that all that information that comes in—and it is sometimes tens of thousands of pages of information—it goes up on the Web. Unless it is Privacy Act-protected or something like that, it is going to go up on the Web, so anybody can evaluate it.

One of the other things that we did in our new regulation is we have always notified the governor and the attorney general about when a petition comes in of the state in which the group is in, but we did not notify county governments. We heard from counties that they want to know, too. So, in our rule we changed that so that we also notify the county the tribe is located in.

This bill, H.R. 3764, does not provide any notice to counties. So, again, it took the old version of the regulation, and used that as the model for this bill. And that old version was much less transparent than what we are doing today. This bill would be better considered if it adopted our new rules that have much more transparency.

Mrs. TORRES. Chairman Young, in the interest of improving the bill, is this something that could be considered, Chairman Bishop, through an amendment process, or—thank you.

I am very concerned about creating a political process, where Members that are of a political party or affiliated with a political party will be forced to pick and choose between winners and losers, empowering through the lobbying effort, those who can pay for access and those who may not be able to pay for access.

Can you elaborate on some unintended consequences if Congress has the sole responsibility for recognizing tribes? What would that process look like? Would it be as transparent?

I know you said posting some of these comments on the Web site. I am trying to get the bigger picture.

Mr. WASHBURN. Yes, Madam Torres. I think that it would be—I mean who knows why Congress makes decisions? And how they choose which issue to take up, because it is a target-rich environment. There is a lot of stuff that comes before Congress. And I think you are right, it would involve more lobbyists, because it would take getting someone to advocate over here to get a bill taken up, and——

Mrs. TORRES. I am going to interrupt you for a minute and use myself as an example. I have not a single tribe within my district, but I made it my business to learn the issues, tribal issues, not just in my home state of California, but across the country. I am not sure that we have that caliber of interest from all of the Members, or the time that they can allocate to doing that—if you can finish your statement.

Mr. WASHBURN. Thank you, Madam Torres. Yes, that is the problem, you all cannot be experts in this stuff, you just cannot. And

I cannot either, frankly. But we have a staff of PhDs that are experts that can do this work. And, frankly, they are more competent to do the work, and they are more focused. They are experts. They are not acting in a political way, and it does not matter how many lobbyists you have to get something through.

Congress has the ability to do this work anyway. So that will still happen, there will still be people who can come over here and advocate for tribes to get congressional recognition. But, ours provides a different, alternative route.

Mrs. TORRES. To the issue of the Indian Child Welfare Act, how would this bill impact that?

Mr. WASHBURN. Well, certainly it could. There is a lot of litigation pending right now about the Indian Child Welfare Act. And if this bill puts any of those tribes at risk of legitimacy, then those issues could come up there, like anywhere else. And it would undermine tribes' ability to protect their own children, potentially.

Mrs. TORRES. Which is alarming, given the fact that we have so many of our Indian youths committing suicide.

I yield back my time.

Mr. YOUNG. Mr. Gosar.

Dr. GOSAR. Thank you. Secretary Washburn, it is good seeing you. I must be missing something here. Was there a Supreme Court ruling, or a new law passed by Congress, or something I missed here that allowed you to go through these new regulations?

Mr. WASHBURN. No. Actually, no one——

Dr. GOSAR. So—no, no, no, I get it. You talk about it—it is my time—you talk about its inconvenience, that we have not passed a budget. But the Administration is part of the problem.

So there was no Supreme Court ruling, or no new law passed by Congress, yes or no, that gave you jurisdiction to acknowledge tribes? Was there? Yes or no? It is pretty easy, legitimate question.

Mr. WASHBURN. It is not new, but yes, we do have laws that have passed that——

Dr. GOSAR. There was no new Supreme Court ruling or law passed by Congress to give you additional jurisdiction. Yes or no?

Mr. WASHBURN. It is true that they are not new.

Dr. GOSAR. No. The answer is no. Yet the BIA decided to move forward and enact these over-reaching new regulations by regulatory fiat, something very typified by this Administration, and dramatically water down and reduce the standards by which tribes become federally recognized in this country.

Do you think your agency's new regulations will withstand congressional and judicial scrutiny?

Mr. WASHBURN. Yes.

Dr. GOSAR. Well, you must think like the glass is half full kind of guy. I think that is what you are. I mean you have to think that the Chairman of the Natural Resources Committee, being forced to draw up a bill because your agency did not work with Congress.

You have several tribes and tribal organizations that have come out in opposition to these new mandates. You have a bipartisan rider in the base bill of the House Interior appropriations blocking these new regulations. And you stated earlier there are no new laws from Congress, and no new Supreme Court decisions that

mandated your decision—your agency to put these over-reaching new mandates—wow.

So, let me ask you a question. So you are familiar with Article I, Section 8, Clause 3, are you not? Yes or no?

Mr. WASHBURN. Yes.

Dr. GOSAR. What does that clause mean to you?

Mr. WASHBURN. It means that Congress has the authority to regulate commerce with Indian tribes and foreign nations, and among the states.

Dr. GOSAR. So, let's take that aspect. Let's take that clause. In fact, tribes have absolute sovereign immunity against everyone except the Federal Government. Correct?

Mr. WASHBURN. Well, I would not——

Dr. GOSAR. Oh, be careful on your answer there.

Mr. WASHBURN [continuing]. Line that up to that. Tribes do have——

Dr. GOSAR. Now you better be careful on that answer.

Mr. WASHBURN. Tribes have sovereign immunity, but it does not necessarily rise from that particular clause.

Dr. GOSAR. The answer probably should be yes.

Mr. WASHBURN. Well, you are the expert.

Dr. GOSAR. So, given your scholarly knowledge, I mean, I was insulted by your conversation, frankly, trying to spank Congress in regards to this—in what you said earlier.

So, given your scholarly knowledge on Article I, Section 8, I am perplexed that you failed to realize that Congress is the only body that can make substantial changes to the process by which tribes become federally recognized, and that you are opposed to H.R. 3764. Under H.R. 3764, BIA would still play a critical role in the tribal recognition process, analyzing applications and submitting recommendations to Congress, who would then authorize recognition.

H.R. 3764 is consistent with our Constitution, and recognizes that a solemn Act of Congress is required for a new tribe to become federally recognized, and that this process does not become dramatically changed by some bureaucrat sitting behind a desk in Washington, DC.

So, you claim in your testimony that your new regulations provide for a greater transparency by increasing public access to petitions. Yet the final new rule actually prevents third parties from participating in the Secretary's review of a petition. This deviates significantly from current policy. If you truly wish to increase transparency, why the new restriction?

Mr. WASHBURN. I am not sure I follow you. We have invited much greater participation in the process of making decisions by making all this information public. We have put it up on Web sites so that people can evaluate it for themselves and write to us with their concerns, if they have concerns. So, we actually have a lot more opportunity for public input into our decisions.

Dr. GOSAR. You really miss the point, in the fact that the plenary body for this discussion is sitting at this table. Is sitting at this table. It sits in the 435 and the other 100. How absurd, that you and this Administration thinks, with a stroke of a pen, they are

going to change those rules and regulations. This is defiance like I have never seen before.

This is worse than any other jurisdiction that I have seen, whether it be the EPA, the water rule, whether it be the clean power rule—this is worse than all of that, because this distorts the Constitution, plain and simple. I yield back, Mr. Chairman.

Mr. YOUNG. Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. Secretary, you referenced the hearing meeting in April, and that the discussion expected was a robust discussion on the proposed rule, where that was going to go, and our feedback as to what those reforms meant, and on and on. The discourse turned into a direction that was quite alarming to Indian country in the sense of questioning legitimacy of the acknowledgment process, the Secretary's role, the Administration's role, and the authority. So, Indian country is on high alert about what this means. And they should be, rightfully so. I think in this legislation there is a precedent, and I kind of see the Chairman's legislation as a first step toward a slippery slope on a bunch of issues, not only dealing with this issue of recognition and acknowledgment, but issues more fundamental, government-to-government, trust responsibility, and the sovereignty issue that is central to this whole discussion.

As I understand, the primary rationale is to once again place Congress in the role of the final arbitrator—or the only arbitrator—in the acknowledgment process. Because that is a constitutional—not only a prerogative, but it is a dereliction that we have not been doing it up to this point.

So, that constitutional question, if I may, your response to that is that we have no choice but to do this legislation, because otherwise we are violating the Constitution.

Mr. WASHBURN. No, thank you, Mr. Ranking Member. Let me just say that this process has been going on, at some level, since the very first days of treaties. And, more recently, the process that we have just reformed started in 1978. And the Ronald Reagan administration recognized six tribes, administratively, through this process. So, if what we are doing here is unconstitutional, it was done unconstitutionally by President Reagan, President George W. Bush, President Clinton—it has been done for years and years. So I do not really find that very compelling.

In 1994, Congress passed an act called the Tribal List Act, saying the only properly-acknowledged tribes are the ones recognized by the Secretary of the Interior. In the findings, Congress said that is one of the ways that tribes can be recognized, by the Secretary of the Interior—also by Congress or by the courts.

So, I do not think that there are any serious questions about——

Mr. GRIJALVA. OK.

Mr. WASHBURN [continuing]. Congress' delegation, or its ability to delegate this issue.

Mr. GRIJALVA. Two related issues now on the assumption that the process would be Congress-centric and nothing else. Or you might once in a while provide some information, a recommendation, but that the final arbiter would be Members of Congress, and they could initiate, they could accept, they could wait, they could whatever, because that process is not defined in the legislation.

But let's—the slippery slope question, which is what has Indian country on alert beyond this recognition issue. Land taken into trust, the same argument could be applied in terms of what the Secretary is doing now, in acknowledging that land coming into trust and becoming part of the Indian land. Would that fit that same criteria?

Mr. WASHBURN. Well, I am certain—that is one of the things that Indian country is concerned about. And Indian country is watching this hearing. One of the things they are worried about is, in the spring, first, this committee took up acknowledgment, and then they took up land into trust, and questioned the Interior's ability to take land into trust. I do think there is some concern that the next shoe to drop may be Congress trying to take away the Administration's ability to take land into trust and say, "Well, that is our responsibility, too."

I do not think tribes want to put that much power in the Majority of Congress. I think that they would rather the Administration continue to have the ability to take land into trust.

Mr. GRIJALVA. Last question, and it is more of a comment—Congress, and its function, is critically important. And this institution is important, but it is an institution ripe for getting politicized on almost every issue. So, then we face a situation, potentially, of the legitimacy of a recognition, or an acknowledgment of a tribe, past or present, being now part of a more involved process, which involves everything else attendant to legislation that happens here, from lobbyists to everything that follows that process.

I see that as a detriment to any independent analysis. I see it as a detriment to Indian country, that might not have the means to be able to access decisionmakers. I see that as potentially possibly the most threatening part of it, in that this legislation now opens the door to a process that should be transparent, clean. It is cumbersome now because you do not have the resources, but to bring it into the full control of Congress without any other check and balance, I think, is a very, very dangerous precedent. I yield back.

Mr. YOUNG. I thank the gentleman. I want to remind everybody again this is a hearing on a bill. And I am always interested that we have this Administration that threatens to veto an Indian Energy Act. Where is the support for the American Natives, the first Americans, which is strongly supported by all the tribes? I want everybody to remember that you start making this a partisan issue—I will go through the partisan issue, and a lot of talk, not much action, especially by this Administration.

I suggest, respectfully, that we ought to really look at the big picture if we truly want to help the American Indians—or just talk about it. I have been here long enough to watch this high suicide rate. What did you do about it? Nothing. Poverty? What did you do about it? Nothing. Old status quo. I am trying to change the status quo, trying to make them more self-sufficient, improve their way of life, be part of America—not by talk, but by action. Yet every time I turn around, Kevin, your Administration proposes to take away what is their right. And not a word. Including your Department.

Mr. Chairman? Mr. Bishop? You are up.

Mr. BISHOP. Thank you. I think I am appreciative of everyone's ability to see into my soul of what my motives actually are. I wish I was as sure as the rest of you are, what my motives actually are.

So, let me ask you something actually about the bill, itself. I have heard the complaints that you have given. You are talking about the findings, which, as I said, to me, the criteria on which recognition would take place. And I think this is actually no surprise to you. When we talked on the phone once I said I do not really care if your findings and criteria are perfect; it is an issue of who has the legal responsibility to make the final decision.

Let's say that I just took everything you had for Sections 3 through 10, that all the criteria you have written down so far is just criteria, and then kept Section 11, which says Congress then makes the final decision. Would you then support the bill?

Mr. WASHBURN. Well, I would say this, Chairman. That is a fair request. And that would improve the bill, no question, I believe. The down side of that is that the biggest criticism that we have——

Mr. BISHOP. I am sorry. I appreciate you wanting to explain here. I do not have much time. Just—would that satisfy you? Would——

Mr. WASHBURN. No.

Mr. BISHOP. No?

Mr. WASHBURN. Sorry.

Mr. BISHOP. All right. I would ask of you a couple of things, just personally. I have read the citations you have given on the rules, as to which laws give you the power to do what you are doing. To be honest, I cannot find the reference to which you say you have that power in there. And I understand the Indian Reorganization Act of 1934 was not one of the six statutes that you——

Mr. WASHBURN. No, it was not.

Mr. BISHOP. So, at some point in here I would like you just to point out to me—and you can do this in writing, too, we do not need to take the time right here to do it—but where you actually get that power. Because, as I read the verbiage in here, it is not only obtuse, it just does not even exist.

You will acknowledge, though, that as I envision this process to go through, that the Department would still be involved in looking at the data from every tribe, and making recommendations to Congress, that that would have to be the first step.

Mr. WASHBURN. That is true.

Mr. BISHOP. So, the involvement in BIA would have to be there, which is one of the things I think becomes significant, important. Although I will take exception to the idea that the agency itself is non-partisan. You guys are as partisan as everyone else up here. It is part of the process that goes through there.

I also will admit there are some things have been brought up now, like your recommendation of a timeline. I like that concept. That is something we should definitely look at, as well. There should be a timeline as to when decisions should be made for the agency, as well as for us. I kind of like that approach going in there, as well as anything that would indicate litigation, and look at that. I would like to do that.

I would hope you would admit that if we put the criteria in statute, it has far more power and clarity than if it was simply in a regulation, especially a regulation that could be waived later on.

And that, I think, is one of the concepts that has to be here. So, I would like to look at that.

I would like to ask you one question, if you can give me a guarantee—and this is only because it has historically happened—that if indeed this bill goes to the House and the Senate—seems like it is going to go to the President's desk—that this Administration will not hurry up and make a lot of tribal recognitions just before the bill actually goes into some kind of effect, if there is an enacting date. I say that only because that is exactly what Teddy Roosevelt did when Congress gave him limitations on his power, and he quickly went through and made a lot of national forests and then signed the bill that said he could not make a national forest.

Am I assuming that this Administration, or you, would recommend this Administration would not do that kind of a tactic?

Mr. WASHBURN. I am not going to bind the Administration. My sense is we will do what we think is right, and what is just——

Mr. BISHOP. Now that is the scary part. One of the reasons why I would like this in statute is so we know exactly what the game is, what the ball looks like, and it is listed in statute. You guys can make the recommendation, but it is still Congress' responsibility, legally, to make that final decision. That is the way the world should work in some way.

I do want to take one umbrage at your history. I am a history teacher, so——

Mr. WASHBURN. Fair enough.

Mr. BISHOP. You are not FDR. It does go back to the late 1800s. It was Max Weber that had that first concept coming in there of separating politics from administration. The agencies do run on that kind of mind-set, well before World War I. And also, sadly, this is an era in which the new fun political philosophy was Communism. That did not work out, either.

It is time for a paradigm shift, and it is time to actually have the agencies working with Congress, not opposed to Congress. If you have specific recommendations as far as the procedures of what the policy should be, I am more than happy to look at that. I will be more than happy to make those type of amendments. And, if any other Member has those type of things, I want to look at that kind of stuff.

My goal is simply to have, in statute, inexplicably, what the criteria is, without the ability of any agency to actually try to waiver that—to make it the standard, so that everybody knows what it is. My goal is actually to empower Native American tribes, and we should be doing that. Unfortunately, we do not have a great record. We give a lot of lip service about it, but there is not a great record of actually doing that empowerment. That is the goal and the purpose here, but still can be done.

I am sorry, I am over time, but you are still stuck in the 1800s—late 1800s admittedly, but the 1800s. I yield back.

Mr. YOUNG. I thank you, Chairman. I was going to come to that, what you said.

Kevin, if we were to adopt the rules which you have written up, which were asked for, and then you made the recommendation after the information was submitted to you, to the Congress, yes or no, we would be able to see it. Then a time frame on which there

could be action by Congress, and if not acted upon, it would automatically be recognized as a tribe. What would be wrong with that? Because we still play a role then.

Mr. WASHBURN. Yes. Well, that is starting to sound a little more positive. Because if we make a——

Mr. YOUNG. Kevin, all due respect, we have never been negative. That is the thing that hurts me. I have tribes writing me letters already, without looking at what we are doing. My frustration is there seems to be a political ginning up in Indian country. And, sometimes, I want to know who really is speaking for Indian country. We are trying to solve a problem. We asked you to do that. You have done a fair job in your rules, which you brought forth. OK?

Mr. WASHBURN. Thank you.

Mr. YOUNG. Now we are going to put a time frame in there, where if we do not act, it automatically becomes the recommendation of the Department of the Interior. That means you are involved, it means we are involved.

Who can object to that? You have to admit every secretary that comes before this committee is different: different policy, different philosophies, et cetera. And it goes back to the Chairman's idea—that puts the Congress back in the position of having a role, as the Constitution says. Instead of coming up here and banging me on the head all the time, why don't you come up with some good suggestions? Because we are going to solve this problem, not letting an individual, human being, one administration, be different than one in the past, with the tribes not knowing what direction they have to go in.

I have tribes that I really think they did everything they were supposed to do, and because—it was not you—they did not accept it. What is that tribe supposed to do then? Then they come to Congress.

So I am just suggesting—look, I am going to ask you a question. My time is my time, I have the gavel, I will use what I want. You are on the Department of the Interior, correct?

Mr. WASHBURN. Yes, sir.

Mr. YOUNG. You realize what the mineral management has done on recommendations of Rule—3,000, by the way, pages—I want everybody to listen to this—3,000 pages on coal mining, and with those regulations, the effect upon Native lands. Are you aware of that?

Mr. WASHBURN. Well, I have heard a little bit of discussion about it. It is not within my authority——

Mr. YOUNG. But it is your purview, because what they are proposing, they are taking away the coal that belongs to the Natives, the tribes that you are here defending. It takes that wealth away from them, arbitrarily.

Now, I am suggesting your seat should be screaming bloody murder down in minerals and management. They have the gall to say in that report—3,000 pages—that we will make up for the loss of jobs in the coal industry by hiring people to implement the regulation to enforce this regulation. That is really good government work.

But I am saying where is the defense of this Administration to defend the tribes against the taking from one of the agencies?

Mr. WASHBURN. Well——

Mr. YOUNG. Have you been—is your staff there? Are they aware of it?

Mr. WASHBURN. We are very much engaged in discussions internally with the Administration, and we win some and we lose some, but I am not going to air the dirty laundry here.

Mr. YOUNG. OK. Kevin, that is our problem. I am very frustrated with this whole thing, because here we created these tribes, and by an Act of Congress, an act of the Administration, they are going to take what is rightfully theirs without compensation. Where is the outcry on this side of the aisle?

Dr. RUIZ. Are you asking?

Mr. YOUNG. Why doesn't someone say something in defense of these tribes and their wealth being taken away by the Administration, saying, "We are helping the Natives out"? That is the thing that frustrates me, not a word. Every one of the reservations that have coal are going to loot the value of the coal. So I just want you to be aware of this; I am very aware of this, and we are going to try to stop this in the appropriation process. But we have to have a larger, louder voice in the Department of the Interior when they start screwing around with the first Americans. And that is really what they are doing. Then they have a big conference next week, wherever it is, and they say, "Oh, we are helping the tribes out." Yet they are taking their property.

Now, we are going to continue the bill, Kevin. We are going to continue this, and we are going to arrive at—I think my solution to it would be your input, our input, constitutionally we have a solution. And that is what we will work on.

You have some questions——

Dr. RUIZ. Yes, I do.

Mr. YOUNG. OK.

Dr. RUIZ. Well, I want to——

Mr. BISHOP. Mr. Chairman, can I just take a privilege right here, and apologize?

Dr. RUIZ. Absolutely.

Mr. BISHOP. This is one of the ironies of time. I actually have some of the Utah Native Americans that are in my office that I need to meet with. I just want to excuse myself in saying I am sorry I am being rude by walking out of here, but anything you have, I am still open to those ideas, if you will be happy to send them to me. Anything you guys have, I am open to those ideas. But the bottom line is still—we make the decision.

Dr. RUIZ. Well, I am appreciative of you being——

Mr. BISHOP. I will apologize.

Dr. RUIZ [continuing]. Open to those ideas, and working with us.

I also have a letter here from the Ute Indian Tribe that you are going to meet with, Chairman Bishop, in opposition to the bill. I ask unanimous consent that it be entered in the record.

[No response.]

Mr. YOUNG. Without objection.

[The letter from the Ute Tribe offered by Dr. Ruiz for the record follows:]

UTE INDIAN TRIBE,
FORT DUCHESNE, UTAH 84026

October 27, 2015

Hon. ROB BISHOP, *Chairman*,
House Committee on Natural Resources,
Washington, DC 20515.

Re: Opposition to Tribal Recognition Act of 2015 (H.R. 3764)

DEAR CHAIRMAN BISHOP:

The Ute Indian Tribe appreciates your interest and work in the area of federal recognition of Indian tribes. Recognition of Indian tribes, the first inhabitants of this great land, is one of the United State's most solemn and important obligations. Federal recognition establishes a special and unique government-to-government relationship between the Federal Government and an Indian tribe, and creates significant legal rights, responsibilities and commitments.

Given the significance of Federal recognition decisions, the Tribe must oppose H.R. 3764. While we support Congressional oversight of the Department of the Interior to protect the integrity of the recognition process and to prevent a flood of new tribes from diminishing already scarce Indian affairs budgets, acts of Congress should not be the only or the primary way that the United States recognizes Indian tribes.

First, Federal recognition of Indian tribes should not be subject to Congressional politics. In some cases, partisan politics or a single U.S. Senator seeking to filibuster could prevent a deserving tribe from being recognized. In other cases, a politically powerful group could get recognized as an Indian tribe whether or not they have a history of being an Indian tribe.

Second, the bill provides no standards or requirements for Congress to follow in making decisions on Federal recognition. The bill requires the Secretary of the Interior to provide a report summarizing her view of petitions for Federal recognition, but the bill does not require Congress to consider the Secretary's views. Congress could even act on its own with or without a report from the Secretary.

Third, Congress is not staffed or equipped to manage the recognition of Indian tribes. Under the current system, the Department of the Interior utilizes anthropological, genealogical, and historical research methods, to verify and evaluate petitions for Federal recognition. Individual Members of Congress and Congressional Committee's lack the staff, resources and expertise to assess these petitions.

As Chairman of the Natural Resources Committee with its Subcommittee on Indian, Insular and Alaska Native Affairs, and as our Congressional Representative, the Tribe requests that you consult with us and other tribes on matters involving Federal Indian law and policy. While there are some areas needing serious reform, for example, Indian energy development, there are other significant cornerstones of Federal Indian law that should be maintained, for example, government-to-government consultation, the Indian Reorganization Act and the Indian Self-Determination and Education Assistance Act. Working together and consulting on these important matters we can find common ground that honors the treaty and trust relationship upon which the United States was built.

Thank your for your consideration of our opposition to H.R. 3764. We look forward to working with you on this bill and other legislation to improve our future while honoring and maintaining our past. Please contact the Tribe's Business Committee to arrange future consultations on these matters.

Sincerely,

SHAUN CHAPOOSE, CHAIRMAN,
Ute Tribal Business Committee.

Mr. YOUNG. Again, what bothers me, Indian country is not trying to solve problems.

Dr. RUIZ. I also ask unanimous consent that the following letter and resolution in opposition to this bill from the United South and Eastern Tribes be entered into the record.

[No response.]

Mr. YOUNG. Without objection.

[The letter from the United South and Eastern Tribes offered by Dr. Ruiz for the record follows:]

UNITED SOUTH AND EASTERN TRIBES, INC.
NASHVILLE, TENNESSEE

October 28, 2015

Hon. ROB BISHOP, *Chairman,*
House Committee on Natural Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

DEAR CHAIRMAN BISHOP:

On behalf of United South and Eastern Tribes we write in strong opposition to the proposed elimination of the Secretary of Interior's well-established legal authority to recognize American Indian groups via the federal acknowledgement process, thereby forcing Tribes to petition Congress for federal recognition. We are deeply concerned that placing sole authority for recognition in the hands of Congress will unduly inject unrelated political considerations into a process that is at the heart of the Federal trust responsibility.

The government to government relationship between Tribal Nations and the United States begins at the point where each recognizes the sovereignty of the other. For this reason it is important that the Federal Government have in place a credible, non-politicized process for determining which Tribes it recognizes. Administrative recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a Tribe.

The United States Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to Indian Tribes. United South and Eastern Tribes, along with eight other Tribes and Tribal organizations, submitted comments for the record of the hearing of April 22nd to the House Natural Resources Committee providing legal validation and support for the Secretary's authority to acknowledge Tribes. While there may be differences of opinion regarding the revised Part 83 federal recognition process, there is overwhelming agreement within Indian Country that the Secretary is well-positioned to recognize Tribes.

We urge that you reconsider this proposed legislation and instead work directly with Tribes to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that all branches of government share equally in the federal trust responsibility and opposes any effort that fails to fully recognize the obligations and authorities of each. We look forward to working with you to ensure that this is upheld.

Respectfully,

Brian Patterson,
President.

Kitcki Carroll,
USET Executive Director.

Dr. RUIZ. Thank you very much.

Mr. YOUNG. They will have——

Dr. RUIZ. In terms of——

Mr. YOUNG. Just a moment, I am not finished.

Dr. RUIZ. Yes, sir. Go ahead.

Mr. YOUNG. Without objection. Again, this is an example of your so-called—you brought up the word "lobbyist." Who do you think is ginning these letters up?

Dr. RUIZ. It is from the Ute. And to suggest that they are being influenced and cannot make their own decisions because of——

Mr. YOUNG. I asked you the question. Who do you think——

Dr. RUIZ. Well, I think the Utes are——

Mr. YOUNG. OK.

Dr. RUIZ [continuing]. Deciding for themselves what they want to support or not.

Mr. YOUNG. When they get a chance to testify, we will find out——

Dr. RUIZ. OK.

Mr. YOUNG [continuing]. Who represents them here.

Dr. RUIZ. OK. So thank you for accepting these letters. I just want to make it very clear, from what I have heard, is that the Republicans disagree that those that have been recognized through the Department of the Interior, and all those Californian tribes that have been recognized through the judicial system are, in fact, illegal and not recognized.

Mr. YOUNG. That is not true.

Dr. RUIZ. Well, the arguments that I have heard have been attacking the Administration for not having the legal authority to recognize those tribes. So it makes sense, logical sense, that one could conclude that you are in disagreement for the legal existence on all those tribes that have not been recognized by Congress.

Now, let me put that to rest. It is U.S. Code 25, U.S. Code 2 and 9, and 43 U.S. Code 1457 that granted the Assistant Secretary of Indian Affairs the authority to "have management of all Indian affairs, and all matters arising out of Indian relations. This authority includes the authority to administratively acknowledge Indian tribes." So, yes, the 567 tribes that have been recognized are legally recognized.

Now, on the merits of this bill, and the fact that Congress wants to only have the authority to recognize tribes, I am actually very disappointed in Congressman LaMalfa, who would assume that Congress does not have hyper-partisan, dysfunction, inability during these times, and that somehow Congress miraculously works, functions, and has the approval of the vast majority of——

Mr. LAMALFA. Would the gentleman yield?

Dr. RUIZ. No, sir, not right now.

So, that is the part that I am most concerned about this bill. I am expressing the concerns and the outrage that I have heard from tribes throughout the Nation, that not only is it an offense to suggest that these legally-recognized tribes, oh by the way, are all of a sudden not legally recognized, and open them up to litigation, but, in fact, suggesting that would disempower those tribes by taking away their ability to advocate for themselves as a sovereign nation.

This bill in particular has a problem that it does not afford the extensive, evidence-based process that we can rely on—anthropologists, geologists, and epidemiologists—to give us some evidence to confirm that the tribes' claims are absolutely accurate to a point where we can provide that evidence, scientific based, to those claims.

Now, this bill would put the power to recognize tribes in the hands of the Chairman of this Committee and the Speaker of the House. There is no doubt you know how this place works. It will be the Chairman and the Speaker who decides which tribes can

and cannot be recognized. And in this era of hyper-partisanship, to suggest otherwise is absurd.

The other thing is that this is not about ideology or philosophy or a lesson in the Constitution, because, clearly, they have had the right to recognize tribes.

We need to honestly put people above this partisanship, and solutions above ideology. A solution to safeguard, truly, the interest of Native Americans and the self-determination, and to make sure that we do not infuse the political interest of career politicians, to allow different venues and checks and balances for tribes to be fully recognized to the extent that they want to be fully recognized, not to the extent that the Chairman of the Natural Resources Committee and the Speaker of the House would decide who they favor, and who they do not favor.

So, my solution would be to create a bill regarding the solutions of the Part 83 which future Secretaries of the Interior would have to follow, but have the process also be under the Department of the Interior—if you want a check and balance—as well as Congress. You asked for a recommendation, that is a part of a solution that I believe will protect tribes from the partisanship and the self-interest of politicians and give it a more scientific, evidence-based process. I yield back my time.

Mr. YOUNG. I always appreciate the gentleman talking about partisanship. We are the bad guys every time. Every time. I have listened to you every time, and the Ranking Member. Yet you came up with a solution that I proposed. Do you have hearing problems? I proposed that. That is what I suggested. Let them do their job, make the recommendations, and put a time frame we either have to act on it in a period of time or it becomes the recommendation of the Department of the Interior. Now that is progress.

I have sat through this too many times and listened to you talking about how bad Republicans are. And, unfortunately, I want to remind you I was in a position of being in the Minority 22 years, and watched your side of the aisle never do a thing. I have records of this—lip service, you bet you, but nothing. I have been trying to change that M.O. for self-determination, being able to do as they wish to do. And you cannot do it every time you sit in that chair and say how bad we are, as Republicans. You do not have to say it. Show us where you have done anything correct for the Native people. You have not. And that is the thing that despairs me the most. You use this as a political football. There is nothing in this for me at all, nothing. But that thing bothers me, when you constantly say Republicans are bad.

Mr. LaMalfa, you would like to respond?

Mr. LAMALFA. Thank you, Mr. Chairman. Let's get back to the basics here. We are having a hearing on a proposal for a bill.

Mr. YOUNG. Be nice once in a while. Do not be so——

Mr. LAMALFA. We are hearing ideas, we are gathering input from the Administration through the BIA, and we will be gathering more information from the tribes on how this affects them. I think what we are looking for is more consistency. I asked the Assistant Secretary earlier—does the current policy state that—I will read the quote again—"Any petition that was previously denied Federal

acknowledgment in this process may not re-petition." That accurately states the position.

So, we are moving in a direction where the BIA is going to take a lesser role. And I still have this ideal concept that the founders had, that this is the people's house. We would still ask the BIA to do the research, to turn up all the old records and the archeology, all the anthropology, all the old things that have to do with the background needed to properly research the tribe. It would just come to us for the end results, for the accountable people that have to stand for election every 2 years. And I do not even want to talk in partisan terms, you know.

Are we here to throw out previous recognitions? Not at all. We are here to tighten up the process. And it is one that needs to be tightened. So to say that, well, because of hyper-partisanship, or K Street, or lobbyists, or all that stuff, then why would we do anything? Why don't we just cede everything over to the Administration to make all the decisions? I think down at 1600 they may like more of that, that is certainly what it appears in recent years.

But I come here all the way from California, as do some of my colleagues here—and one from Alaska—each week to have these things out, and do the best we can, as representatives directly of the people. We have direct responsibility, answer directly to them at our town halls, at our opportunities to see our members in the district, and for those to come see us here in Washington, as well, and ask for changes in policy.

So, we are impugning the entire foundation of what this country, this institution, this House of Representatives, is founded on when we make statements like that. You know? It is certainly not perfect. I would not defend that it is perfect, but we have a process that we are supposed to try and make better all the time, and try to adhere to, improving it all the time. And maybe we will get over the partisanship, or the other aspects that influence us. But we have to do the best we can. I still think that the founding principles of vesting that power into the lower house first, or even the upper house, the power with the people, instead of ceding that over to a bureaucracy, is going to give the best possible outcome in the long run.

But it is a combination. We are asking to work with the BIA. They have said in the new rules here that they do not want to have all that power, that indeed it is a process that needs to have an end some time. And we should have that stamp of approval at the end. So I think, with this hearing, on the concept of this bill, we are moving in the right direction. We are trying to do that.

So, I appreciate, Mr. Chairman, that you are trying to host that and do that, and I will yield back.

Mr. YOUNG. I thank the gentleman. You are up.

Mr. GRIJALVA. Thank you, Mr. Young. And honestly, I appreciate the comments you made about lip service, because I agree with you. I think there is a lot of talk. And what happens is, on issues important to Indian country, that we end up dealing with issues of either ideological convenience, or of convenience as to who is able to grease the process the best.

Now, I really think, Mr. Chairman, that you are correct. It is a series of actions that this Congress needs to take, beginning with

the budgets, and the request that came in, in terms of resources, before—Members on this side of the aisle have filed legislation dealing with Indian health care, diabetes, renewable energy development, BIA school reform, the Respect Act that codifies consultation, and the Indian Health Act and improvements to that, land-into-trust issues that have come—been filed by numerous Members of both sides of the aisle.

So, I agree with you, Mr. Chairman. I think—but for Indian country, it is kind of the proof is in the pudding—if we can step away from some of these ideological debates, and deal with some of the really pragmatic things that are going to make the life of our fellow citizens better, then we should deal with those. This committee is in a perfect role. We have that jurisdictional responsibility to the rest of Congress. And I think—and I couldn't agree with you more, that if we take some steps, then maybe we could start not just walking, not just talking, but actually walking that talk.

And I would pledge, toward that end, our side of the aisle is more than prepared to sit with you and begin to look at those pragmatic steps down the line. And thank you, Mr. Chairman, I yield back.

Mr. YOUNG. I thank the gentleman. I can assure you that we are going to have another hearing, and we are going to have tribal representation here. And especially to those that are going to testify—we are going to try to streamline this issue, have a set of rules that the next secretary has to follow, regardless of the position of the Administration, that there will be some set program on how we accomplish this goal.

I am going to look forward to that group that has some new input. Maybe we will come to those solutions, because the Chairman is serious about it, I am serious about this. I want to make sure that we accomplish the goal of making sure that self-determination is done through the tribes. We can do that, and I expect, Kevin, to work with you, and be done.

Do you have a question?

Mrs. TORRES. I have a comment. If you don't mind, I really want to go back to Chairman Bishop's comments that he is happy and willing to work with us to come up with some type of transparency agreement to ensure that all of those folks that have a say-so, have an opportunity to come to the table.

Again, I am very concerned, and I want to ensure that, for the record, we all understand that my concern is with the very poor tribes that may not be able to afford a representative to come here and represent them, or may not be able to pay freight to come here, and may not have an opportunity to have 1 or 2 minutes to speak to the issue of sovereignty. I want to make sure that there is a process for them to be heard. So, to that extent, I want to thank Chairman Bishop's opportunity—or extending us the opportunity to bring about those recommendations.

Mr. YOUNG. Again, here is the deal. You talk about not having—that is only if the Congress was to pass this legislation being petitioned by a tribe that had a lot of money.

My goal originally with Kevin—and, as was before—is to improve the way that the Department establishes legitimacy of the application. And I don't know how they do that, frankly, because they do

apply, it is a big process to have this occur. He goes through a lot. My biggest concern is he is there today; who is going to be there tomorrow?

Mrs. TORRES. I get that.

Mr. YOUNG. Will they accept it the next time? That is not the correct way to do it—have a platform that says everyone has to do it the same way, and then we have the final say. If there is no objection, everything looks—we don't even—but there is a time frame. We have to act.

That is what we are going to do in the final—and I am going to recognize you for about 2 minutes, because I have another meeting to go to.

Dr. RUIZ. Sure, I will just be real quick, because you asked me what the Democrats have done; they passed the Indian Health Care Improvement Act under the ACA, and this Administration has——

Mr. YOUNG. That was my bill.

Dr. RUIZ. Well, it is great. But it got passed.

Mr. YOUNG. That was my bill, you know. That was my bill.

Dr. RUIZ. And it passed.

Mr. YOUNG. And who do you think worked on it?

Dr. RUIZ. Yes.

Mr. YOUNG. My staff worked 15 years.

Dr. RUIZ. So see, I am giving you compliments.

Mr. YOUNG. Yes, well, yes, go ahead.

[Laughter.]

Dr. RUIZ. I am giving you compliments. See? Also, there has been——

Mr. WASHBURN. Bipartisanship.

Dr. RUIZ. Bipartisanship. Also, there has been some increase in funding, especially within the Indian Health Service, within this Administration's budget. Just because you asked me, I had to answer that.

Another founding principle that we have is a wonderful set-up that is remarkable, and that is checks and balances. So, let's give the tribes the ability to have checks and balances, as well, and not put that complete authority in the hands of the Chairman of the Natural Resources Committee and the Secretary of the Speaker's House.

I would suggest that, yes, Secretary Washburn has been responsive. The reason why we are here to begin with is because we asked him to change the rules. He changed the rules because we asked him to change the rules. So, to say that he refused to work with us is completely false. He changed the rules. We don't like the rules? Then let's write the rules, but let's also give them, the tribes, an ability to use another venue, so that it does not depend on the political interests of Members of Congress, so that we can help tribes keep some level of evidence and scientific approach, rather than the political interest of individual Members. That is all I am saying. Thank you very much.

Mr. YOUNG. I thank the gentleman. Keep in mind—I think that is the same thing I said. I asked Kevin to rewrite these—Kevin is going to be gone in 11 months.

I bet you are happy about that. And how do I know who else is going to be sitting in that chair? How does a tribe know? We are going to rewrite this bill, and that is to let you guys have an opportunity to rewrite this bill using a little common sense, and we may end up with a solution to a problem. Then we will see whether this President would sign it. Remember, Kevin, you only have 11 months. So speak up when you get a right time. I think we are about out of time.

With that, the committee is adjourned.

[Whereupon, at 4:47 p.m., the subcommittee adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES, INC. FOR THE OCTOBER 28 HEARING OF THE HOUSE SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS ON H.R. 3764, "TRIBAL RECOGNITION ACT OF 2015"

Independent Authority of Executive Branch to Recognize Tribal Nations

On behalf of United South and Eastern Tribes (USET), we submit the following written testimony for inclusion in the record of the House Natural Resources Committee, Subcommittee on Indian, Insular and Alaska Native Affairs' legislative hearing on H.R. 3764, the Tribal Recognition Act of 2015. USET is a non-profit, inter-tribal organization representing 26 federally-recognized tribal nations from Texas to Florida and up to Maine.[1] USET is dedicated to enhancing the development of federally-recognized Indian tribes, to improving the capabilities of tribal governments, and assisting USET Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes ensuring each branch of the Federal Government works to fulfill solemn obligations to tribal nations in execution of the Federal trust responsibility.

Although Congress has properly delegated authority to the executive branch to make a determination regarding the Federal recognition of tribal nations, the executive branch also has independent recognition authority granted by the Constitution. If Congress now attempts to restrict the executive branch's recognition authority through H.R. 3764, which would provide that only Congress may recognize tribal nations, that legislation would likely be deemed unconstitutional.

There are currently 566 federally-recognized tribal nations included on the list the Department of the Interior maintains at the direction of Congress.[2] Federal recognition marks the beginning of a government-to-government relationship, and it is predicated on the entity possessing sovereign tribal government status for purposes of Federal law.[3] Congress has authority to initiate a government-to-government relationship, but most tribal nations did not receive Federal recognition in this manner. Instead, many tribal nations received Federal recognition from the executive

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[1] USET member Tribes include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

[2] 25 U.S.C. § 479a–1 (requiring Department to maintain and publish list); 80 Fed. Reg. 1,942 (Jan. 14, 2015) (listing federally-recognized tribal nations). The Department has since issued a positive final determination recognizing one additional tribal nation. 80 Fed. Reg. 39,144 (July 8, 2015).

[3] H.R. Rep. No. 103–781 (1994) (stating recognition is formal political act that establishes government-to-government relationship); 140 Cong. Rec. S6145 (May 19, 1994) (Sen. McCain) ("The recognition of an Indian tribe by the Federal Government is just that—the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations."); Cohen's Handbook of Federal Indian Law 134 (Nell Jessup Newton et al. eds., 2012 ed.).

branch.[4] The standards the executive branch uses for determining whether an entity possesses sovereign tribal government status for purposes of Federal law grew out of case law,[5] drawing from cases that articulate where tribal nations' inherent sovereignty originated,[6] how they maintain that sovereignty over time,[7] and what their political governing structure must entail.[8]

Although you have been fully briefed on the matter, we reiterate that Congress has properly delegated authority to the executive branch to recognize tribal nations through 25 U.S.C. § 2, 25 U.S.C. § 9, and 43 U.S.C. § 1457. Like Congress' constitutional grant of recognition authority through the Indian Commerce Clause,[9] the statutes delegating recognition authority to the executive branch do so in broad terms. Many courts have recognized Congress' proper delegation of recognition authority through these broad statutes.[10] Congress when it enacted the 1994 Federally Recognized Indian Tribe List Act reiterated its past delegation of recognition authority to the executive branch.[11]

Separate from congressional delegation, the executive branch has independent constitutional authority to recognize tribal nations. The Constitution grants the executive branch authority to undertake diplomatic and administrative actions consistent with Federal recognition.[12] This authority is most clearly granted through

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[4] *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004) ("Federal recognition may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity.") (quoting William C. Canby, Jr., *American Indian Law in a Nutshell* 4 (4th ed. 2004)); 140 Cong. Rec. S6145 (May 19, 1994) ("Over the years, the Federal Government has extended recognition to Indian tribes through treaties, executive orders, a course of dealing, decisions of the Federal courts, acts of Congress and administrative action.") (Sen. McCain); Cohen's Handbook of Federal Indian Law 134 (Nell Jessup Newton et al. eds., 2012 ed.) ("Tribes recognized by treaty, statute, administrative process, or other intercourse with the United States are known as federally-recognized tribes."). Some tribal nations, including those involved in the *Tillie Hardwick* litigation, received recognition after a court made a judicial determination that a past attempt to terminate the tribal nation's Federal recognition failed and thus remained.

[5] *See* Cohen's Handbook of Federal Indian Law 138–39 (Nell Jessup Newton et al. eds., 2012 ed.).

[6] *See Worcester v. Georgia*, 31 U.S. 515 (1832).

[7] *See United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975).

[8] *See Morton v. Mancari*, 417 U.S. 535 (1974).

[9] U.S. Const., art. I, § 8, cl. 3 (granting Congress power to "regulate Commerce with . . . the Indian Tribes"); *see also* Cohen's Handbook of Federal Indian Law 136 (Nell Jessup Newton et al. eds., 2012 ed.).

[10] *Muwekma Oholne Tribe v. Salazar*, 708 F.3d 209, 211 (D.C. Cir. 2013) (citing § 2 and § 9); *Samish Indian Nation v. United States*, 419 F.3d 1355, 1370 (Fed. Cir. 2005) (citing § 2 and § 9); *Miami Nation of Indians of Indiana, Inc. v. U.S. Dep't of the Interior*, 255 F.3d 342, 345 (7th Cir. 2001) (citing § 2 and § 9); *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 59–60 (2nd Cir. 1994) (citing § 9); *James v. U.S. Dept. of Health and Human Services*, 824 F.2d 1132, 1137 (D.C. Cir. 1987) (citing § 2 and § 9); *Robinson v. Salazar*, 885 F. Supp. 2d 1002, 1024–25 (E.D. Cal. 2012) (citing § 2 and § 9); *Burt Lake Band of Ottawa and Chippewa Indians v. Norton*, 217 F. Supp. 2d 76, 77 (D.D.C. 2002) (citing § 2 and § 1457); *Kahawaiolaa v. Norton*, 222 F. Supp. 2d 1213, 1219 (D. Haw. 2002) (citing § 2, § 9, and § 1457); *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1163 (N.D. Ind. 1995) (citing § 2 and § 9); *see also Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004); *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 549 (10th Cir. 2001); *W. Shoshone Bus. Council for & on Behalf of W. Shoshone Tribe of Duck Valley Reservation v. Babbitt*, 1 F.3d 1052, 1057–58 (10th Cir. 1993); Cohen's Handbook of Federal Indian Law 136 (Nell Jessup Newton et al. eds., 2012 ed.) (citing § 2 and § 9).

[11] Pub. L. No. 103–454, § 103, 108 Stat 4791 (1994) (stating tribal nations may be recognized "by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe'") (codified at 25 U.S.C. § 479a findings); *Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074, 1076 (10th Cir. 2004), as amended on denial of reh'g (2005); *United States v. Livingston*, No. CR–F–09–273–LJO, 2010 WL 3463887, *14 (E.D. Cal. Sept. 1, 2010); see also 25 U.S.C. § 479a(2) (defining "Indian tribe" to mean "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe").

[12] Cohen's Handbook of Federal Indian Law 136 (Nell Jessup Newton et al. eds., 2012 ed.); *see also* Mark D. Myers, *Federal Recognition of Indian Tribes in the United States*, 12 Stan. L. & Pol'y Rev. 271, 272 (2001) ("In theory, the President could unilaterally recognize a tribe by taking action consistent with recognizing a foreign government, such as making a proclamation of recognition, establishing regular dealings with the tribe, or applying existing law to the tribe. Power to undertake certain diplomatic and administrative actions consistent with Federal recognition of tribes is constitutionally and statutorily committed to the executive branch.").

the Constitution's Treaty Clause.[13] The Constitution also grants the executive branch the authority to receive and provide ambassadors.[14]

The executive branch has exercised its congressionally granted recognition authority in various ways. Long before Congress delegated recognition authority to the executive branch, and even before the United States was formed, the executive branch engaged in treaty negotiations with tribal nations.[15] President George Washington entered into and then worked with the Senate to ratify the first treaties in 1789, thereby establishing that treaties with tribal nations would utilize the same process treaties with foreign nations must go through.[16] Before the treaty making era ended in 1871, most tribal nations had entered into a treaty with the United States.[17] Although the Senate was involved in ratifying these treaties, the executive branch utilized its constitutional treaty making authority and was therefore the governmental branch responsible for treaty making with tribal nations.[18]

Courts have acknowledged that the executive branch has independent constitutional authority to recognize tribal nations, although they have gone on to discuss Congress' proper delegation of authority as a sufficient grant of power. The Seventh Circuit in *Miami Nation of Indians of Indian, Inc. v. Dep't of the Interior*, the seminal case finding that Congress properly delegated recognition authority to the executive branch, made an important and telling reference to separate executive branch recognition authority.[19] The court there stated it is not "clear that [recognition] *has* to be authorized by Congress."[20] Instead, the court explained: "Recognition is, as we have pointed out, traditionally an executive function. When done by treaty it requires the Senate's consent, but it never *requires* legislative action, whatever power Congress may have to legislate in the area."[21] The next year, the United States District Court for the District of Hawaii noted of its own volition that the court in *Miami* had suggested the executive branch has independent recognition authority.[22]

When the executive branch exercises its recognition authority, courts have deferred to its decision as a political question not subject to review.[23] The Tenth Circuit in *Western Shoshone Business Council for and on Behalf of Western Shoshone Tribe of Duck Valley Reservation v. Babbitt* explained that judicial deference to the executive branch's determinations of tribal recognition is "grounded in the executive's exclusive power to govern relations with foreign nations."[24] Thus,

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[13] U.S. Const., art. II, § 2, cl. 2 ("He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur . . .").

[14] U.S. Const., art. II, § 2, cl. 2 ("[H]e shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States . . .).

[15] *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 196 (1876) ("From the commencement of its existence, the United States has negotiated with the Indians in their tribal condition as nations, dependent, it is true, but still capable of making treaties. This was only following the practice of Great Britain before the Revolution."); Cohen's Handbook of Federal Indian Law 31–32 (Nell Jessup Newton et al. eds., 2012 ed.); Mark D. Myers, *Federal Recognition of Indian Tribes in the United States*, 12 Stan. L. & Pol'y Rev. 271, 272 (2001).

[16] Cohen's Handbook of Federal Indian Law 31–32 (Nell Jessup Newton et al. eds., 2012 ed.); *see also United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 197 (1876) ("Besides, the power to make treaties with the Indian tribes is, as we have seen, coextensive with that to make treaties with foreign nations."); *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).

[17] *Marks v. United States*, 161 U.S. 297, 302 (1896); William W. Quinn, Jr., *Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept*, 34 Am. J. Legal Hist. 331, 339 (1990) (stating 372 tribal nations recognized through treaties).

[18] Cohen's Handbook of Federal Indian Law 25, 393 (Nell Jessup Newton et al. eds., 2012 ed.); Felix S. Cohen, Handbook of Federal Indian Law 33–34, 274 (1942).

[19] 255 F.3d 342 (7th Cir. 2011).

[20] *Miami Nation of Indians of Indian, Inc. v. Dep't of the Interior*, 255 F.3d 342, 346–347 (7th Cir. 2001).

[21] *Miami Nation of Indians of Indian, Inc. v. Dep't of the Interior*, 255 F.3d 342, 346–347 (7th Cir. 2001).

[22] *Kahawaiolaa v. Norton*, 222 F.Supp.2d 1213, 1218 n.6 (D. Haw. 2002).

[23] *United States v. Holliday*, 70 U.S. 407, 419 (1865) ("In reference to all matters of this kind, it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs."); *Miami Nation of Indians of Indiana, Inc. v. U.S. Dep't of the Interior*, 255 F.3d 342, 347–348 (7th Cir. 2001); *United States v. Washington*, 384 F. Supp. 312, 400 (W.D. Wash. 1974) ("The recognition of a tribe as a treaty party or the political successor in interest to a treaty party is a Federal political question on which state authorities and Federal courts must follow the determination by the legislative or executive branch of the Federal Government.").

[24] 1 F.3d 1052, 1057 (10th Cir. 1993); *see also* Felix S. Cohen, Handbook of Federal Indian Law 33–34, 274 (1942) ("[T]he question of tribal existence and congressional power has been classed as a 'political question' along with the recognition of foreign governments and other issues of international relations.").

deference stems from the executive branch's exercise of its independent constitutional powers.

Courts have found that the executive branch's treaty negotiations with Tribal Nations constitute Federal recognition.[25] The Department of the Interior in making determinations regarding whether a tribal nation is federally recognized has also treated treaty negotiations as indicative of Federal recognition.[26] Also evidencing Federal recognition, and often resulting from treaties, is a Federal reservation created for a tribal nation.[27] In fact, in defining "tribe" in the Indian Reorganization Act, Congress acknowledged that "Indians residing on one reservation" possess sovereign tribal government status.[28]

Since the treaty making era ended, the executive branch has legally federally-recognized tribal nations through other means. For example, the executive branch replaced treaties with Executive orders immediately after treaty making ended.[29] When Congress enacted the Indian Reorganization Act in 1934, the Department of the Interior conducted sovereign tribal government status examinations to determine which tribal entities were eligible for benefits under the Act, thus resulting in their recognition.[30] In 1978, the Department of the Interior promulgated the Federal recognition regulations in order to create a more consistent process for Federal recognition,[31] and it published its first comprehensive list of federally-recognized tribal nations in 1979.[32]

Although Congress has properly delegated authority to the executive branch to federally-recognized tribal nations, the executive branch also has independent recognition authority granted by the Constitution. If Congress now attempts to restrict the executive branch's recognition authority, it risks a finding that its legislation is unconstitutional.

USET urges that you reconsider this proposed legislation and instead work directly with tribal nations to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that all branches of government share equally in the Federal trust responsibility and opposes any effort that fails to fully recognize the obligations and authorities of each. We look forward to working with you to ensure that this is upheld. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at 202–624–3550 or Lmalerba@usetinc.org.

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[25] *The Kansas Indians*, 72 U.S. 737, 738 (1866) (holding state not permitted to apply laws to Indians where "the tribal organization of Indian bands is recognized by the political department of the National government as existing; that is to say, if the National government makes treaties with, and has its Indian agent among them, paying annuities, and dealing otherwise with 'head men' in its behalf").

[26] *See, e.g.*, 25 C.F.R. § 83.12(a)(1) (listing treaty relations as one method for demonstrating previous Federal recognition for purpose of regulatory recognition process); 25 C.F.R. § 292.8(a) (listing treaty negotiations as method for demonstrating past recognition for purposes of Indian Gaming Regulatory Act); Cohen's Handbook of Federal Indian Law 146 (Nell Jessup Newton et al. eds., 2012 ed.); Felix S. Cohen, Handbook of Federal Indian Law 269, 271 (1942).

[27] Cohen's Handbook of Federal Indian Law 141 (Nell Jessup Newton et al. eds., 2012 ed.) ("Normally a group will be treated as a tribe or a recognized tribe if Congress or the executive has created a reservation for the group by treaty, agreement, statute, executive order, or valid administrative action and the United States has had some continuing political relationship with the group.")

[28] 25 U.S.C. § 479; Felix S. Cohen, Handbook of Federal Indian Law 33–34, 270 n.22 (1942).

[29] *See Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 211 (D.C. Cir. 2013); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008).

[30] *Muwekma Oholne Tribe v. Salazar*, 708 F.3d 209, 211 (D.C. Cir. 2013); 59 Fed. Reg. 9,280 (Feb. 25, 1994) (stating tribal nations recognized on case-by-case basis before Department of Interior promulgated Federal recognition regulations in 1978); Cohen's Handbook of Federal Indian Law 146 (Nell Jessup Newton et al. eds., 2012 ed.); Felix S. Cohen, Handbook of Federal Indian Law 33–34, 270 (1942); William W. Quinn, Jr., *Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept*, 34 Am. J. Legal Hist. 331, 357 (1990).

[31] *See* 25 C.F.R. Part 83; *Muwekma Oholne Tribe v. Salazar*, 708 F.3d 209, 211 (D.C. Cir. 2013).

[32] 44 Fed. Reg. 7,235 (Feb. 6, 1979).

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

- October 19–24, 2008, National Congress of American Indians, Resolution No. PHX–08–055, "NCAI Policy on Federal Recognition of Indian Tribes." 2 pages.
- October 1, 2012, Alliance of Colonial Era Tribes, Resolution No. 2012–07–01, "Calling on the Congress of the United States to Affirm the Acknowledgment of Tribes identified in Federal records as tribal communities prior to 1960, those who had tribal citizens attend federally-funded Indian schools and closely associated Indian mission boarding schools." 2 pages.
- October 13–18, 2013, National Congress of American Indians, Resolution No. TUL–13–002, "Supporting the Bureau of Indian Affairs Proposed Reform of the Federal Recognition Process." 3 pages.
- October 28, 2015, Ma-Chis Lower Creek Indian Tribe of Alabama, Testimony submitted to Chairman Bishop regarding H.R. 3764. 4 pages.
- November 9, 2015, Rev. John Norwood, Ph.D., General Secretary, Alliance of Colonial Era Tribes, Letter to Chairman Young regarding H.R. 3764. 2 pages.

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LEGISLATIVE HEARING ON H.R. 3764, TO PROVIDE THAT AN INDIAN GROUP MAY RECEIVE FEDERAL ACKNOWLEDGMENT AS AN INDIAN TRIBE ONLY BY AN ACT OF CONGRESS, AND FOR OTHER PURPOSES, "TRIBAL RECOGNITION ACT OF 2015"—PART 2

Tuesday, December 8, 2015
U.S. House of Representatives
Subcommittee on Indian, Insular and Alaska Native Affairs
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 11:09 a.m., in room 1334, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Benishek, Gosar, LaMalfa, Denham, Cook, Bishop; Ruiz, Sablan, Torres.

Also present: Representative Grijalva.

Mr. YOUNG. The Subcommittee on Indian, Insular and Alaska Native Affairs will come to order. The subcommittee is meeting today to hear testimony following bill H.R. 3764, the "Tribal Recognition Act of 2015," sponsored by the Full Committee Chairman, Mr. Bishop from Utah.

Under Committee Rule 4, any oral opening statements are limited to the Chairman and Ranking Minority Member and Vice Chair and designee of the Ranking Member. And, very frankly, anybody who wishes to have an opening statement, I will grant that permission, too.

Therefore, I ask unanimous consent that anybody that does not wish to make a statement can submit it to the committee by the close of the day.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. As I mentioned earlier, we are here to hear testimony on H.R. 3764. The subcommittee previously received testimony from the Department on October 28. This hearing is the committee's and the Chairman's effort to obtain the views from the stakeholders on this legislation.

Established in Article I, Section 8 of the Constitution and held by the Supreme Court, Congress has exclusive and absolute authority over Indian affairs. The bill provides that congressional determinations will be informed by the analysis of the Department of the Interior's professional experts. This process will ensure designations of tribes will be conducted in a consistent manner, moving forward into the future.

As the Full Committee Chairman already noted previously, these recognition standards should be set in statute.

We have several witnesses today from tribal, state, and local communities.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF THE HON. DON YOUNG, CHAIRMAN, SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

As I mentioned already, we will be hearing testimony on H.R. 3764. The subcommittee previously received testimony from the Department of the Interior on October 28. This hearing is the committee and Chairman's efforts in obtain the views from stakeholders on this legislation.

Established in Article I, Section 8 of the Constitution and held by the Supreme Court, Congress has exclusive and absolute authority over Indian affairs.

This bill provides that congressional determinations will be informed by the analysis of the Department of the Interior's professional experts. This process will ensure designations of tribes will be conducted in a consistent manner moving forward into the future.

As the Full Committee Chairman already noted previously, these recognition standards should be set in statute.

We have several witnesses here today; from tribal, state, and local communities.

Mr. YOUNG. I will now recognize the Ranking Member for his opening statement.

STATEMENT OF THE HON. RAUL RUIZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. RUIZ. Thank you, Mr. Chairman. First I want to recognize and thank the Chairman for scheduling this second hearing on H.R. 3764, so that we can hear from state, local, and tribal leaders on this issue.

Let me start by reiterating my sentiments from the first hearing on this bill. H.R. 3764 is a thinly veiled attempt to upend the legally-supported ability for the Secretary of the Interior to federally recognize Indian tribes, in order to consolidate that power in the hands of a few politicians. It would take away the options for the tribes to rightfully petition the government for Federal recognition in a more open, objective, scientific, evidence-based, and transparent process and, instead, put it solely in the hands of a few politicians, making it less transparent, less consistent, less objective, and more at the whims of partisan dysfunction.

In essence, the bill will disempower legitimate tribal groups and empower politicians, specifically the Chairman of the Natural Resources Committee and the Speaker of the House, who can decide which bills we choose to vote on and which bills we choose not to vote on. This bill will weaken tribal self-determination and strengthen politicians' self-interest.

The big picture here is that there are problems with the Federal recognition process. The Assistant Secretary has made changes, as instructed by this committee, but many tribes continue to have concerns, legitimately, that those changes do nothing to address the problems. This bill does nothing to address the problems with the old process. And we need to address the new process, and make changes to those.

The process can still be improved to uphold the sovereignty of our Native Nations. But eliminating the process altogether, and

putting it in the hands of a hyper-partisan, dysfunctional Congress is counterintuitive to the goals of transparency, consistency, and integrity.

Indian country is not calling for a wholesale repeal of the Federal recognition process. In a recent op-ed in *Indian Country Today* titled, "Attempt by Congress to Steal Native Sovereignty Unconstitutional," President John Yellow Bird Steele of the Oglala Sioux Tribe states that, "H.R. 3764 misreads the Constitution, overturns longstanding historical precedent, increases the bureaucracy and legislative burden on Indian tribes and politicizes the Federal Acknowledgment Process."

Also, the letter in opposition submitted by the Cherokee Nation Principal Chief Bill John Baker, states that, "H.R. 3764 does little to implement any of the reforms found in the new Part 83 process, and, as currently written, does not provide new solutions that improve upon the fairness and transparency of the current process."

And, in the letter in opposition from the Ute Indian Tribe, they clearly lay out the arguments that were made against this bill at the last hearing: specifically, that H.R. 3764 will wrongly take the Federal recognition process out of the rigorous science and evidence-based approach of the Part 83 process, and replace it with one subject to partisan politics and the whims of outside special interests.

With over 30 percent of Native children living in poverty today, and suicide rates among Native youth over two times the national average, it is disappointing that this committee is focusing and fast-tracking legislation that much of Indian country both opposes and did not ask for.

Thank you, Mr. Chairman, and I yield back my time.

[The prepared statement of Dr. Ruiz follows:]

PREPARED STATEMENT OF THE HON. RAUL RUIZ, RANKING MEMBER, SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

Thank you, Mr. Chairman. First, I want to recognize and thank the Chairman for scheduling this second hearing on H.R. 3764, so that we can hear from state, local and tribal leaders on this issue.

Let me start by reiterating my sentiments from the first hearing on this bill. H.R. 3764 is a thinly veiled attempt to upend the legally supported ability for the Secretary of the Interior to federally recognize Indian tribes, in order to consolidate that power in the hands of a few. It would take away the option for tribes to rightfully petition the government for Federal recognition in a more open, objective, scientific, evidence-based and transparent process, and instead replace it with one that is outdated, has no clear path forward, and is ripe for political corruption and outside influence.

In essence, the bill will disempower legitimate tribal groups and empower politicians, specifically the Chairman of the Natural Resources Committee and the Speaker of the House. This will weaken tribal self-determination and strengthen politician's self-interest.

The big picture here is that there are problems with the Federal recognition process. The Assistant Secretary has made changes, but many tribes continue to have concerns that those changes do nothing to address the problems with the old process, while introducing new ones that do need to be addressed.

The process can still be improved to uphold the sovereignty of our Native nations. But eliminating the process and putting it in the hands of a hyper-partisan, dysfunctional Congress is counter-intuitive to the goals of transparency, consistency, and integrity.

Despite what might be inferred here today, Indian country is not calling for wholesale repeal of the Federal recognition process. In a recent op-ed in *Indian Country Today* titled "Attempt by Congress to Steal Native Sovereignty Unconstitutional," President John Yellow Bird Steele of the Oglala Sioux Tribe states that

"H.R. 3764 misreads the Constitution, overturns longstanding historical precedent, increases the bureaucracy and legislative burden on Indian tribes and politicizes the Federal Acknowledgement Process."

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And, in the letter in opposition from the Ute Indian Tribe they clearly lay out the arguments we made against this bill at the last hearing: Specifically, that H.R. 3764 will wrongly take the Federal recognition process out of the rigorous science and evidenced-based approach of the Part 83 process, and replace it with one subject to partisan politics and the whims of outside special interests.

With over 30 percent of Native children living in poverty today and suicide rates among Native youth over two times the national average, it is disappointing that this committee is focusing and fast-tracking legislation that much of Indian country both opposes and did not ask for.

Thank you Mr. Chairman, I yield back.

Mr. YOUNG. Does the Chairman——

Mr. BISHOP. No, we have enough partisan crap going on here right now. I would rather get to the testimony of the witnesses as quickly as possible. I will yield.

Mr. YOUNG. I see little attempt on the other side of the aisle to work together, to listen, instead of opinionizing. You do that all the time. The Ranking Member doesn't understand one thing. We are here to try to solve a problem. You may not agree, but this is what this hearing is about, not to sit here and make a partisan issue out of it.

Dr. RUIZ. No, this hearing is about——

Mr. YOUNG. I'll now introduce our witnesses—the Honorable Sean Reyes, the Honorable Robert Martin, Nicholas Mullane, and the Honorable Brian Patterson, I think all of you are in front of us.

You know the rules. You have 5 minutes. The lights will go on, you know how they are handled. If I think it is a good statement being made about how you can solve a problem, we might give you a leniency to go on.

I now recognize the Honorable Robert Martin to testify at this time.

STATEMENT OF ROBERT MARTIN, CHAIRMAN, MORONGO BAND OF MISSION INDIANS, BANNING, CALIFORNIA

Mr. MARTIN. Mr. Chairman, Dr. Ruiz, and members of the subcommittee, thank you for providing the Morongo Tribe with this opportunity to again testify before you on issues of tribal recognition.

When I addressed this subcommittee in April, we believed the proposed regulations would relax the then-existing standards without addressing the core underlying problems with the process. While Morongo fully understands and appreciates the changes that were made before the regulations became final, we believe the Department of the Interior has only partially hit the target.

Furthermore, we believe that the new regulations will do little to address the inconsistent application of the rules, and the inherent problems associated with governmental bureaucracy.

Given this view, Morongo believes Congress must act to restore the rigorous pre-July 1 standards into law, and scale back the Administration's authority. In April, we raised five specific concerns with the proposed regulations. Our primary concern was and still is that the Department could allow a petitioner to become a federally-recognized tribe, even if there is no historical evidence that the tribe existed prior to the formation of the United States, or first contact with settlers.

While the term "historical" is redefined in the final rule as meaning the year 1900, rather than 1934, the Department seems to have missed our point. Tribal sovereignty is based on the fact that tribal governments predate the Constitution and first contact with Europeans. That is why the pre-July 1 regulations require such a demonstration, and why we are happy to see the standard is maintained in H.R. 3764.

Our second major concern was the watering-down of the requirements for external identification since 1900. This concern was addressed in the final rule of H.R. 3764.

Third, we were concerned that the Department's proposal would allow for evidentiary gaps of 20 years or more. Fortunately, the Department largely maintained the existing evidentiary standard, which H.R. 3764 preserves as well.

Fourth, we expressed concern about reaffirmation. Morongo appreciates the new policy on this matter, but we would have preferred the Department to categorically prohibit petitioners from using this made-up process in the regulation itself.

Fifth, based on the Department's testimony and press releases, we believe that the final rule prohibited previously-denied petitioners from going back through the less-rigorous process. We supported that position. Unfortunately, we now know that at least one previously-denied petitioner was invited to seek Federal acknowledgment on August 31 of this year. This inconsistency is troubling to Morongo.

Should H.R. 3764 be enacted, the Secretary would no longer have the independent ability to recognize tribal governments. That power would rest exclusively with Congress.

We grasp the controversial nature of this proposal, but when our Tribal Council discussed the issue at length, we ultimately concluded that such a change is necessary to address lack of consistency on issues, such as reaffirmation and re-petitioning. While we are not so naïve as to believe that Congress is immune to political influence, we have more faith in our locally-elected representatives than the bureaucrats that have no connection to our communities.

With that said, we encourage Congress to identify a process for the timely consideration of reports submitted by the Assistant Secretary. Changes to this effect need be included prior to enactment.

Finally, in Section 11 of the bill that states the legislation shall not affect the status of any Indian tribe that was lawfully federally acknowledged, this seems to call into question whether the Secretary ever had the authority to acknowledge tribes.

We have provided the committee with a suggested remedy to this problem in our testimony for the record. Thank you.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF ROBERT MARTIN, CHAIRMAN, MORONGO BAND OF MISSION INDIANS

Mr. Chairman, Doctor Ruiz and members of the subcommittee, thank you for providing the Morongo Tribe with this opportunity to again testify before you on the issue of tribal recognition. As you may recall, I was before this panel in April to address what was then a proposal by the Administration to amend the Federal acknowledgement regulations.

At that time our tribe believed the proposed regulation would relax the then-existing rigorous standards without addressing some of the core, underlying problems with the process itself. While Morongo fully understands and appreciates the changes that were made before the regulations became final, we remain concerned the new regulations undermine the political relationship between federally-acknowledged tribes and the United States. Furthermore, we believe the new regulations will do little to address the inherent problems associated with government bureaucracy and the inconsistency with which the Department of the Interior has executed this function. Given this view, Morongo believes Congress must act to put the more rigorous original standards into law.

As we testified earlier, this issue is fundamental to all of Indian country; it is the standard by which the United States determines which groups of Native peoples should be treated as sovereign governments. Establishing a standard that is too restrictive potentially denies legitimate groups the unique rights and status provided to a sovereign government. Conversely, setting the bar too low undermines the political relationship between federally-acknowledged tribes and the United States by blurring the distinction between a truly sovereign political entity and a mere aggregation of individuals who may have some common ancestry.

After having reviewed the changes to Part 83, it appears the Department of the Interior has only partially hit the target.

In April, we raised five specific concerns with the proposed regulations.

Our primary concern was and still is that the Department could allow a petitioner to become a federally-recognized tribe even if there is no historical evidence that the tribe existed before the formation of the United States. Instead, the Department proposed using an arbitrary date as the benchmark. While the Department did modify the final rule to redefine "historical" as meaning the year 1900, rather than 1934, as had been proposed, the Department seems to have missed our point.

We strongly believe that tribal sovereignty is based on the fact that tribes and their governments pre-existed the Constitution and first contacts with Europeans. That is why the pre-July 1st Federal regulations required a demonstration of tribal existence from the founding of the United States in 1789, or first sustained contact. This pre-July 1st standard is maintained in H.R. 3764.

Our second major concern was the potential watering down of the requirements for external identification. Under the pre-July 1st rules, petitioners must provide evidence of identification by external sources since 1900. This helps the government differentiate historic tribes from groups that only recently assert tribal heritage. This requirement was largely addressed in the Final Rule and is also maintained in H.R. 3764.

Third, we were greatly concerned that the Department's proposal would allow for evidentiary gaps of 20 years or more. This is a far cry from the more rigorous pre-July 1st requirement of "substantially continuous existence." Fortunately, the Department agreed and largely maintained the existing evidentiary standard. H.R. 3764 also incorporates this requirement.

Fourth, Morongo shares the Assistant Secretary's view that "reaffirmation" by the Department is not a viable form of acknowledgment. While we appreciate the policy memo that accompanied the new regulations, the July 1st Rules would have been stronger if the Department categorically prohibited petitioners from using this made-up process in the regulation itself.

Our fifth and final area of concern was whether previously denied petitioners can re-petition under the newer, more lenient standards. On its face, we were concerned that such a provision would create two classes of tribes: those that can meet the exacting standards, and those that cannot. As this committee knows, creating two classes of tribal governments is a recipe for disaster in Indian country.

Based on the Department's testimony and press releases, we believed that the Final Rule removed the avenue to re-petition, rightly preserving the original determinations and avoiding the creation of two classes of tribes.

But we have since learned that this is not the case. Thanks to the diligent work of this committee, we now know that despite a March 16, 2011 press release from the Department of the Interior stating that "Assistant Secretary—Indian Affairs Larry Echo Hawk today issued a final determination not to acknowledge [a]

petitioner," that same petitioner was re-invited to seek Federal acknowledgement under the new regulations on August 31 of this year.

We recognize that the specific historical documentation requirements have become of secondary interest to the committee, given the more fundamental changes proposed by H.R. 3764. The foundational shift that would occur, should this bill be enacted, is that the Secretary would no longer have the ability to recognize tribal governments. That power would rest exclusively with Congress.

The Morongo Tribal Council has discussed this issue at length, and we concluded that such a change is necessary. While we appreciate the fact that many of the proposed changes to the Part 83 regulations ultimately were not incorporated in the final regulations, we simply believe the current process is inherently flawed and subject to influence by those who have the best relationships within the executive branch. The lack of consistency on issues such as reaffirmation and re-petitioning has convinced us that Congress should be directly involved in the acknowledgement process. While we are not so naïve as to believe that Congress is immune to political influence, we have more faith in our locally elected representatives than in an untold number of bureaucrats that have no connection or direct accountability to our communities.

However, our support for congressional involvement in the process does not mean that there is not still room for improvement.

The Morongo Tribe encourages Congress to identify a process for the timely consideration of reports submitted by the Assistant Secretary. While we understand that not taking action on an issue is one way Congress can state its opinion, a petitioning group should not be stuck in perpetual limbo. Therefore, the report presented by the Assistant Secretary deserves a timely and substantive response from Congress. Fundamentally, we believe timely consideration of any report the Administration submits to Congress will assure greater integrity of the process. We hope changes to this effect can be included prior to enactment.

In addition to the foregoing concerns, we are concerned about the provision in Section 11 of the bill that states that the legislation shall not affect the status of any Indian tribe that was **lawfully** federally acknowledged. As now worded, this language could be construed as calling into question whether the Secretary has ever had the legitimate authority to acknowledge tribes, potentially creating a legal quagmire for many tribes. We would prefer that this language be clarified by, for example, incorporating the language used in Section 83.12(a) of the final rule that explicitly confirms the recognized status of any Tribe for which lands have been taken into trust pursuant to an Act of Congress, whether or not that Act specifically named the Tribe as a beneficiary of such lands. This would be particularly appropriate in California, where Congress authorized the establishment of reservations or Rancherias without necessarily identifying the Tribe or Tribes for which the reservation or Rancheria would be created.

Thank you for your consideration of our views.

Mr. YOUNG. Thank you.

Mr. Reyes, you are next.

STATEMENT OF SEAN D. REYES, ATTORNEY GENERAL, STATE OF UTAH, SALT LAKE CITY, UTAH

Mr. REYES. Thank you and good morning, Chairman Young, Ranking Member Ruiz, Chairman Bishop from the great state of Utah, and members of the subcommittee. Thank you very much for the opportunity to appear before you today to provide the Office of the Utah Attorney General's views regarding H.R. 3764.

First and foremost, I am proud to be American. But I am also extremely proud of my native Hawaiian heritage, its rich cultural traditions, and its contributions to this country. I have a great desire to protect its people and unique characteristics so it may continue to bless this Nation.

Similarly, I am sensitive to the importance of tribal recognition as part of historic agreements between our government and Native American people, and as an ongoing commitment by our Nation to

allow Native American people to protect their rich cultural, religious, and indigenous beliefs and traditions.

The question at issue is not should potential tribes be recognized, but who should make the final determination of recognition when so many critical interests are at stake. Some of those interests belong to the several and sovereign states of our Nation. In addition to my role as our state's top legal and law enforcement official, I also speak on behalf of a number of my state attorney general colleagues.

For certain states, H.R. 3764 would directly affect current potential recognition of Native American groups. These states have concerns regarding the increase in a number of very small groups of Native Americans, sometimes as small as two or three families, seeking Federal recognition through the current Department of the Interior procedures, as administered by the BIA.

The DOI, over a period of years, has become more liberal in granting tribal recognition. Once these small groups are federally recognized, they receive Federal benefits and, of more concern, are not subject to local taxation, criminal laws, local zoning laws, et cetera. As such, tribal acknowledgment impacts fields and areas as diverse as U.S. Government contracting, tribal contracting, to issues related to roads, law enforcement, gaming, hunting, land and water rights.

And just on the record, I wanted to strike from our written statement a reference to a Super 8(a) status as being in error.

In Utah, there are seven Native American tribes, which are currently recognized federally. While none of these would be directly affected by H.R. 3764 and, even if no further groups in Utah ever seek or are granted recognition, there are a number of collateral issues related to H.R. 3764 that are significant to my state and our country.

For example, within recent years, we in Utah have had several Federal cases regarding zoning, which are the types of issues that this legislation could potentially impact. To cite just one matter from Utah, it is 428 F.3d 966, styled *Shivwitz Band of Paiute Indians v. State of Utah*. In summary, it created a tension between tribal and local interests regarding zoning. And while both the Federal District Court and the Tenth Circuit correctly concluded that lands held by tribes are properly exempt from state and local regulatory authority when tribes properly exercise their sovereign discretion, the case provides one more example of why initial tribal designation authority must be deeply considered to properly balance political and policy interests of the state, as well as local and tribal sovereign entities.

While current law allows state and local participation in DOI and BIA decisionmaking processes, the power of tribal designation carries with it collateral consequences for state and local regulatory authority that can most appropriately be considered by this body. Congress, where the several states have direct representation to debate and decide such matters, rather than an executive agency where the several states do not, is the proper body to decide where the sovereignty of each state may be altered by the actions of the Federal Government.

H.R. 3764 would provide a more thorough and comprehensive procedure for Native American groups and communities to obtain Federal recognition, allowing critical DOI and BIA input, but also allowing this body, where the several states have ample and immediate representation, to properly consider and, if necessary, reasonably debate and discuss possible collateral consequences on state sovereignty due to Federal recognition of new tribal entities.

In summary, many state and Federal interests are impacted by acknowledgment or recognition of tribal status. The DOI, through the BIA, should continue its important work of examining evidence and working with petitioners in the recognition process. But Congress is a more accountable body to the people of the several states than any executive agency, and is thus more appropriately situated to make the final tribal recognition decisions.

The clear language of the Constitution, buttressed by clear pronouncements of the Supreme Court, makes Congress the proper and exclusive body that should make final decisions on issues of tribal recognition. Thank you.

[The prepared statement of Mr. Reyes follows:]

PREPARED STATEMENT OF THE HON. SEAN D. REYES, ATTORNEY GENERAL, STATE OF UTAH

Chairman Young, Ranking Member Ruiz and members of the subcommittee, thank you for the opportunity to appear before you today to provide the Office of the Utah Attorney General's views regarding H.R. 3764, To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes.

On behalf of the state of Utah, and at the request of Chairman Young, I, Utah Attorney General Sean D. Reyes, hereby testify regarding H.R. 3764 as follows:

First and foremost, I am proud to be American. But I am also proud of my Native Hawaiian heritage, its rich cultural traditions and its contributions to this country. I have a great desire to protect its people and unique characteristics so it may continue to bless this Nation. Similarly, I am sensitive to the importance of tribal recognition as part of historic agreements between our government and Native American people and as an ongoing commitment by our Nation to allow Native American people to protect their rich cultural, religious and indigenous beliefs and traditions. The question at issue is not "should potential tribes be recognized" but "who should make the final determination of recognition" when so many critical interests are at stake.

Some of those interests belong to the several and sovereign states of our Nation. In addition to my role as our state's top legal and law enforcement official, I also speak on behalf of a number of my state attorney general colleagues. For certain states, H.R. 3764 would directly affect current potential recognition of Native American groups. These states have concerns regarding the increase in number of very small groups of Native Americans, sometimes as small as two or three families, seeking Federal recognition through the current Department of Interior ("DOI") procedures as administered by its Bureau of Indian Affairs ("BIA"). The DOI, over a period of years, has become more liberal in granting tribal recognition, as evidenced by the July 1, 2015 BIA rule relaxing standards by revising the "Part 83" recognition regulations. Once these small groups are federally recognized they receive Federal benefits and, of more concern, are not subject to local taxation, criminal laws, local zoning laws, etc. As such, tribal acknowledgement impacts fields and areas as diverse as U.S. Government contracting (e.g., "Super 8(a) status" for Alaska Native Corporations), tribal contracting (e.g., Utah's Ute Tribal Employment Rights Ordinance or "UTERO") to issues related to roads, law enforcement, gaming, hunting, land and water rights.

In Utah, there are seven Native American Tribes,[1] which are currently recognized federally. While none of these tribes would be directly affected by H.R. 3764 and,

[1] Confederated Tribes of the Goshute, Navajo, Ute, Northwestern Band of Shoshone, Pauite Indian Tribe, Skull Valley Bank of Goshute, Ute Mountain Ute.

even if no further groups in Utah ever seek or are granted recognition, there are a number of collateral issues related to H.R. 3764 that are significant to my state and our country.

For example, within recent years we in Utah have had Federal cases regarding zoning which are the types of issues this legislation could potentially impact. To cite just one matter from Utah, *Shivwitz Band of Paiute Indians et al. v. State of Utah et al.*, 428 F.3d 966 (10th Cir. 2005) involved the named tribe's authority to buy and use property abutting St. George, Utah, incorporating it as part of its Indian Lands, and then leasing it to a billboard company. The billboard company then put up billboards that would have been non-conforming under St. George zoning laws had the land at issue remained under city jurisdiction, and unincorporated into the tribe's lands. While both the Federal District Court and the Tenth Circuit correctly concluded that lands held by tribes are properly exempt from state and local regulatory authority when tribes properly exercise their sovereign discretion, the case provides one example of why initial tribal designation authority must be deeply considered to properly balance political and policy interests of state, as well as local, and tribal sovereign entities.

While current law allows state and local participation in DOI and BIA decision-making processes (though curtailed after the recent BIA Rule), the power of tribal designation carries with it collateral consequences for state and local regulatory authority that can only be appropriately considered by this body. Congress, where the several states have direct representation to debate and decide such matters, rather than an executive agency, where the several states do not, is the proper body to decide where the sovereignty of each state may be altered by the actions of the Federal Government. H.R. 3764 would provide a more thorough and comprehensive procedure for Native American groups and communities to obtain Federal recognition, allowing critical DOI and BIA input, but also allowing this body, where the several states have ample and immediate representation, to properly consider and if necessary reasonably debate and discuss possible collateral consequences on state sovereignty due to Federal recognition of new tribal entities.

Further, Congress is constitutionally the proper entity to maintain the appropriate balance of powers regarding these "political" questions. Article I, Section 8, Clause 3 of the Constitution vests Congress with exclusive authority to "regulate commerce . . . with the Indian Tribes." Combined with Congress' treaty making powers under the Constitution, the U.S. Supreme Court has acknowledged "plenary power" for Congress related to all Indian affairs through the "Indian Commerce Clause." Inherent in this delegation is the authority to recognize a tribe or to deny acknowledgement of the same.

In summary, many state and Federal interests are impacted by "Acknowledgement" or recognition of tribal status. The DOI, through the BIA, should continue its important work of examining evidence and working with petitioners in the recognition process. But Congress is a more accountable body to the people of the several states than any executive agency and is thus more appropriately situated to make the final tribal recognition decisions. The clear language of the Constitution, buttressed by clear pronouncements of the Supreme Court, makes Congress the proper and exclusive body that should make final decisions on issues of tribal recognition.

This concludes my testimony. I am happy to answer questions concerning this bill.

Mr. YOUNG. I thank you.

Mr. Nicholas Mullane, you are up.

STATEMENT OF NICHOLAS H. MULLANE, II, SELECTMAN, TOWN OF NORTH STONINGTON, NORTH STONINGTON, CONNECTICUT

Mr. MULLANE. Good afternoon, Mr. Chairman, Ranking Member Ruiz, Mr. Bishop, members of the committee. This testimony is submitted on behalf of the town of North Stonington, Connecticut. I am Nicholas Mullane, a selectman for the town, and I am accompanied by my first selectman, Sean Murphy. Together with our neighbors, Ledyard and Preston, our town has experienced virtually all of the problems that would be resolved by H.R. 3764.

Mr. YOUNG. Do me a favor and put your microphone closer to your mouth, please.

Mr. MULLANE. Is that close enough? That close. Is that better, sir? I'm sorry. Do I get the clock turned back?

We are located a few miles from the Mohegan Sun, and right next door to the Mashantucket Pequot Reservation. The combined population of our towns is approximately 25,000, less than the attendance at Foxwoods on an average day. The history of the experience is a perfect case study for this bill. In 1983, Congress recognized the Mashantucket Pequot Tribe by statute without factual review by the Department of the Interior. The Reagan administration originally opposed that law, stating ultimately that the Department does not believe it can support further legislation which would legislatively recognize a group of Indian descendants as a tribe unless it has had adequate opportunity to review the historical and current factual basis for the group's claim to tribal status through the BIA Acknowledgment Office.

In 1998, our towns began their role as interested parties in Interior's review of the acknowledgment petitions for the Eastern Pequot and the Paucatuck Eastern Pequot groups. We saw a result-oriented Assistant Secretary take control and turn what BIA technical staff saw as a negative decision into a positive finding. The Interior Board of Appeals ultimately reversed this highly political result. Subsequently, the Inspector General issued a scathing review of the political decisions of Interior's acknowledgment process during that era.

While we did not participate directly, we witnessed the process to recognize the Mohegan Tribe. Interior conducted a review under Part 83 and, without political interference, issued a positive finding. Congress effectively ratified the findings of the Mohegan Settlement Act, which also approved agreements with the tribe, the state, and the town of Montville, Connecticut.

Finally, we participated in Part 83 recent rulemaking. Through this new rule, Interior has greatly weakened the criteria for acknowledgment, limited the rights of third parties, eliminated the role of the Board of Indian Appeals, and provided petitioners with clear procedural advantages. The new rules even sought to reinstate the incorrect, politically-motivated state recognition rule, and allowed previously-denied groups to reapply.

Fortunately, Interior dropped some of these most seriously flawed elements of the proposed Part 83 rules. But the end result is still very troubling. These experiences point to the wisdom of the bill, H.R. 3764. This bill would avoid the defects of tribal acknowledgment left solely to Congress, without the benefit of expert findings under Part 83, and also avoids the pitfalls of leaving acknowledgment solely to Interior, where politically-motivated decisionmakers not limited by any statutory standards can change the rules of the game to produce the desired result, based on politics.

While I believe that some important changes should be made to the bill, it is a vast improvement over the status quo. Our main recommendation is to incorporate some of the procedural requirements from the previous regulations, especially full participation of interested parties and review by the Board of Indian Appeals, as necessary.

We also suggest that 1 year is not sufficient to complete detailed examination of historical records. If the process is to arrive at the truth, there is no substitute for thorough examination of evidence.

Finally, we emphasize that the requirement that Congress affirmatively recognize Indian tribes is essential. Any proposal that would allow the Department's recommendation to take effect after a specific period of time would be a tremendous step backward.

I have more, but I do not have the time, I am sorry.

Mr. YOUNG. I haven't shut you up yet.

Mr. MULLANE. Oh. In closing, I refer you back to Interior's comment on the Mashantucket Pequot law. In that statement, Interior did not object to congressional recognition, but only to taking such action without the Department or BIA's review. That is what H.R. 3764 calls for, and this two-tiered process is exactly what is needed to comply with the Constitution and reduce the potential for politically-motivated decisions and to maintain the credibility of the acknowledgment process with the results.

[The prepared statement of Mr. Mullane follows:]

PREPARED STATEMENT OF NICHOLAS H. MULLANE II, SELECTMAN FOR THE TOWN OF NORTH STONINGTON, CONNECTICUT

Mr. Chairman, Ranking Member Ruiz, and members of the subcommittee, this testimony is submitted on behalf of the town of North Stonington, Connecticut. I am Nicholas H. Mullane II, a Selectman for the Town, and I am accompanied by First Selectman Shawn P. Murphy. Together with our neighbors Ledyard and Preston, our town of North Stonington has experienced virtually all of the problems addressed in H.R. 3764, the bill that is before this subcommittee seeking to improve the tribal acknowledgment process. We greatly appreciate the opportunity to share with you the lessons that we have learned.

To set the stage, our three towns are located in rural southeastern Connecticut and serve as the host communities for the Foxwoods Resort and the Mashantucket Pequot Reservation. We are located a few miles from the Mohegan Sun Resort and that Tribe's Reservation. The combined population of our three towns, approximately 25,000, is substantially less than the attendance at Foxwoods on an average day. We have participated extensively and at great expense in the review of two acknowledgment petitions backed by wealthy gaming investors. The history of our experiences is a perfect case study for this bill.

While we have had disputes with the Mashantucket Pequot Tribe over the years on issues such as off-reservation trust land expansion, taxation, and land use controls, we are proud of our track record of working constructively together for the mutual benefit of our local and tribal governments.

In 1983, Congress recognized the Mashantucket Pequot Tribe by statute without the benefit of factual review by the Department of the Interior. The Reagan administration originally opposed that law, on the grounds that it would bypass the administrative acknowledgment process. Although the Administration ultimately supported the law based on the unique circumstances involved, the Department of the Interior testified that it could not categorically state that the Mashantucket Pequot petitioner would meet the criteria for Federal acknowledgment, and it warned that:

> the Department does not believe it can support any future legislation which would legislatively recognize a group of Indian descendants as a tribe *unless it has had an adequate opportunity to review the historical and current factual bases for the group's claim to tribal status through the Bureau's Federal Acknowledgement Office.* Such a review is necessary not only to ensure the equitable and uniform application of the special laws relating to Indians but also is mandated by fundamental fairness to those other Indian groups which have labored diligently to compile a comprehensive record in support of their claim to tribal status and waited patiently in turn for their petitions' active consideration.[1]

[1] Sen. Rpt. 98–222, at 20 (Sept. 14, 1983) (Statement of John W. Fritz, Deputy Assistant Secretary for Indian Affairs, Department of the Interior) (emphasis added).

While we do not comment on whether the Tribe would have met the BIA acknowledgment criteria, we note that, ever since enactment of this law, questions have been raised about the political motivations of the congressional process that led to the Tribe's recognition and establishment of its Reservation.

In 1998, our Towns began their role as interested parties in Interior's review of the acknowledgment process conducted under the Part 83 rules for the Eastern Pequot and Paucatuck Eastern Pequot groups. We saw a result-oriented Assistant Secretary take control of that review and turn what BIA technical staff saw as negative findings for both groups into a positive finding. The Assistant Secretary at that time, Kevin Gover, did so by means of two politically-motivated maneuvers: (1) forcing the two groups into a single petitioner to cure their individual deficiencies under the criteria, and (2) ruling that state recognition equated with Federal recognition. We ultimately reversed this highly political result thanks to the independent legal review conducted by the Interior Board of Indian Appeals (IBIA), which rejected the incorrect state recognition theory in 2005. Interior issued a negative determination on the combined Eastern Pequot petition in 2006. Subsequently, the Interior Inspector General issued a scathing review of the politicized decisions of Interior's acknowledgment process during that era.

Next, while we did not participate directly, we witnessed the process used to recognize the Mohegan Tribe. In that case, Interior conducted a review under Part 83 and, without political interference, issued a positive finding in 1994. Congress then effectively ratified that finding in the Mohegan Nation of Connecticut Land Claims Settlement Act of 1994, which also approved the negotiated agreements between the Tribe and the state and the town of Montville. There has been no subsequent litigation or controversy.

Finally, we participated recently in the rulemaking process to revise Part 83. Through this new rule, Interior has greatly weakened the criteria for acknowledgment, limited the participation rights of third parties like our Towns, eliminated the objective role of the IBIA, and provided petitioner groups with clear procedural advantages. The new rules even sought to reinstate the incorrect and politically-motivated state recognition rule and to allow previously denied groups, like the Eastern Pequots, to reapply. Fortunately, thanks to our diligent congressional delegation, our governor, and the oversight of this committee, Interior dropped some of the most seriously flawed elements of the proposed Part 83 rules. But the end result is still very troubling and shows the effect of a partisan and political agenda at Interior to facilitate the recognition of new tribes.

These experiences point to the wisdom of H.R. 3764. This bill avoids the defects of tribal acknowledgment left solely to Congress, without the benefit of expert, detailed, historical and factual findings under the Part 83 criteria. It also avoids the pitfalls of leaving acknowledgment solely to Interior, where politically-motivated decisionmakers not limited by any statutory standards can change the rules of the game to produce the desired result based on partisanship and politics.

While we believe some important changes should be made to H.R. 3764, it is a vast improvement over the status quo in four ways.

First, H.R. 3764 is based on the constitutional principle that Congress has plenary authority over Indian affairs and has never delegated the power to acknowledge tribes to Interior. The bill keeps Congress as the ultimate decisionmaker, in keeping with the legislative branch's responsibilities, duties, and authority over Indian affairs.

Second, H.R. 3764 solves the problem that there are no statutory standards governing acknowledgment decisions. Interior is operating in an open field where it can make up whatever rules it wants, for partisan and political reasons, as demonstrated by the recently concluded rulemaking. Our Towns previously submitted extensive comments to the Department's proposed rulemaking, detailing numerous objections and recommendations to the proposed revisions, most of which remained unaddressed in the final rulemaking. Those objections remain relevant and the recommendations could easily be adapted to the process envisioned in H.R. 3764. Our comments included a detailed legal analysis of why the Secretary lacks the legal authority to recognize tribes under Federal law, and that analysis is attached to our written testimony.

Third, H.R. 3764 solves the problem of the overly permissive standards for acknowledgment now in effect by returning to the time-tested and objective criteria that were in effect in 1994.

Fourth, it solves the problem of Congress acting without the benefit of expert technical advice and findings, by giving that role to Interior to make recommendations after the review of the evidence under appropriate criteria.

In short, H.R. 3764 is based on firm constitutional principles and relies on checks and balances that avoid the problems presented by a process conducted solely by Congress, or solely by Interior.

We commend the committee for this bill, but we also recommend some important changes.

Our main recommendation is that H.R. 3764 could be improved by incorporating at least some of the procedural requirements from the previous regulations, especially the full participation of interested third parties and independent review by the IBIA. Our concern is that, without the discipline imposed by review of final agency action of tribal group petitions by an independent Board of Appeals, the Department's reports and recommendations to Congress could easily become mere rubber stamps. We have seen ideologically-motivated Assistant Secretaries bend and break the rules to achieve pre-determined outcomes based on partisanship and politics, even knowing they were subject to judicial scrutiny. It is not clear that a report and recommendation, even if required by statute, would be subject to judicial review, but full participation by interested third parties, and review by the IBIA, would help ensure that the expert judgment of the historians, genealogists, and other professionals of the Office of Federal Acknowledgment would not be simply shunted aside by improper political considerations at the Assistant Secretary level.

We also suggest that 1 year may not be sufficient for the Office of Federal Acknowledgment to complete a detailed examination of the historical record, which in some cases will necessarily reach as far back as the earliest colonial era. Our experience is that the review process can be lengthy and burdensome, for both petitioners and interested third parties such as our Town, but that ultimately, if the process is to arrive at the truth, there is simply no substitute for a thorough, detailed, and rigorous examination of the evidence. A 2-year deadline should be more than sufficient to allow the Department to complete its work, and such a deadline would address the primary reason the process under the previous acknowledgment regulations was seen by some as "broken."

To minimize ongoing uncertainty and to reach finality in this important process, we also suggest that reasonable deadlines to submit letters of intent and documented petitions are necessary so that all petitioner groups can be identified and resources budgeted accordingly, to the benefit of all interested parties, including federally-recognized tribes. We also support the new requirement in the regulations that all materials be made public on the Department's Web site. Transparency is essential in order to facilitate the participation of interested third parties, and we appreciate the new regulations in this one respect.

Finally, we emphasize that the requirement that Congress *affirmatively* recognize Indian tribes is essential. Any proposal or amendment that would allow the Department's recommendation to take effect after a specified period of time would be a tremendous step backwards, even compared to the Department's new regulations. Indeed, such a provision would undermine the benefits of this bill, and magnify the concern that the Department could merely rubber stamp affirmative recommendations for ideological and political reasons. The thrust of H.R. 3764 must be preserved: the Department should not retain the ability to make unilateral acknowledgment decisions that become effective by default. The bill as written appropriately places on Congress the responsibility and duty to acknowledge Indian tribes by an Act of Congress, not by default.

In closing, I refer you back to the Interior comment on the Mashantucket Pequot Indian Claims Settlement Act of 1983. In that statement, Interior did not object to congressional recognition, but only to taking such action without a technical review of a petitioner's qualifications for tribal status. That is what H.R. 3764 calls for, and this two-tier process is exactly what is needed to comply with the Constitution and reduce the potential for politically-motivated acknowledgment decisions. Even if some tribal advocates are correct that Interior has legal authority to recognize the tribes, H.R. 3764 is a vastly approved process that should be enacted.

Tribal acknowledgment is very important business, not only for petitioner groups, but also for states, local governments, existing tribes, and all American citizens. Thank you for your serious effort to ensure objective and fair tribal acknowledgment decisions that abide by the rule of law. And thank you for the opportunity to submit this testimony.

ATTACHMENT

Excerpts of comments submitted by the Towns of Ledyard, North Stonington, and Preston, Connecticut on the Proposed Regulations on Federal Acknowledgment of American Indian Tribes, 79 Fed. Reg. 30,766 (May 29, 2014).

The Proposed Regulations Would Confirm That There Has Been No Valid Delegation of Acknowledgment Authority to the Secretary

. . .

The essence of this argument is that Congress may delegate its legislative power to the Executive Branch, but only when the statute involved specifies the standards that the agency receiving the delegated power must meet. . . . Over the course of the acknowledgment program since 1978, the issue of the Secretary's authority has not arisen in a serious legal challenge because DOI has developed and consistently adhered to a reasonably rigorous set of acknowledgment criteria and procedures. The proposed regulations, however, cast virtually all of that precedent aside and, in doing so, reveal the potentially disastrous consequences of vesting unbridled discretion for such an important federal government determination in the Executive Branch. The current proposal invites legal challenges and confirms the underlying constitutional defect of allowing an agency sub-cabinet level political appointee like the AS-IA to wield great power (*i.e.,* establish a government-to-government relationship between the United States and tribes with sovereign status) without any expression delegation of power to do so or guiding principles or standards set by Congress. As discussed in this section, the U.S. Constitution prohibits implementation of the proposed regulations, and any subsequent determinations based upon them would be invalid.

Constitutional Standard

Article I, Section 1, of the U.S. Constitution vests "All legislative Powers" in the "Congress of the United States." For that reason, as the U.S. Supreme Court noted in *Chrysler Corporation v. Brown*, 441 U.S. 281, 302 (1979): "[T]he exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes." *See also accord Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374 (1986) (reiterating that "[a]n agency may not confer power on itself"); *Lyng v. Payne*, 476 U.S. 926, 937 (1986) (reiterating that "an agency's power is no greater than that delegated to it by Congress").

The preamble in the final acknowledgment rule that was promulgated in 1978 contains the following provision that identifies the statutes that purportedly delegated the Deputy Assistant Secretary of the Interior for Indian Affairs authority to promulgate the rule: "AUTHORITY: 5 U.S.C. 301; and sections 463 and 465 of the revised statutes 25 U.S.C. 2 and 9; and 230 DM [Department of the Interior Manual] 1 and 2." *See* 43 Fed. Reg. 39362 (1978). However, none of those statutes grants such authority, and the Washburn Proposal tests the question of whether the quasi-legislative act of promulgating the Part 83 regulations passes Constitutional muster.

Congress may only delegate a portion of its legislative power to the Executive Branch if the text of the statute delegating that authority sets out an "intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform . . ." *J.W. Hampton, Jr. & Company v. United States*, 276 U.S. 394, 409 (1928). The U.S. Supreme Court elaborated on this standard in *Yakus v. United States*, 321 U.S. 414, 426 (1944), and stated that a statute that delegates legislative authority is invalid if its text contains "an absence of standards for the guidance of [Executive Branch action], so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed . . ." *See also AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607 (1980); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001); *In re NSA Telecomms. Record Litig.*, 671 F.3d 881 (9th Cir. 2011).

The U.S. Supreme Court invoked the nondelegation doctrine, as articulated in *J.W. Hampton*, in *Panama Refining Company v. Ryan* to strike down a provision of the National Industrial Act. 293 U.S. 388 (1934). Section 9(c) of Title I of the National Industrial Act delegated authority to prohibit the transportation of petroleum and petroleum products in interstate and foreign commerce to the President. Section 9(c) stated:

> "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State."

Id. at 407.

This delegation language sets minimal limits on the President's authority to prohibit the transportation of petroleum products. The Court found that, in enacting section 9(c), Congress "has declared no policy, has established no standard, has laid down no rule" for the President's exercise of the legislative power that the statute delegated, in violation of the nondelegation doctrine. *Id.* at 430.

Similar to the delegation provisions at issue in *Panama Refining*, the delegation provisions that the Department is relying on to issue the revised Part 83 regulations, described in more detail below, do not contain any standards constraining the legislative powers that Congress purportedly conferred upon the Department. The delegation provisions that the Department is relying on are very broad and do not articulate any Congressional policy, standards, or rules that Interior must follow when acting under its delegated authority. Under the standards set forth in *J.W. Hampton* and *Yakus*, such a delegation violates the U.S. Constitution.

While the Federal courts have upheld broad delegations of legislative power that contain minimal standards and principles to guide the Executive Branch in exercising those powers, it is unlikely that a court would uphold a delegation of legislative power that contained *no* standards or principles to guide the Executive Branch. As discussed below, the delegation statutes that the Department is relying on as the basis for its authority to issue the Part 83 regulations impose *no* standards or principles to guide Interior in exercising this authority. As such, the unconstrained delegation of legislative power to the Department violates the nondelegation doctrine and the U.S. Constitution.

Statutory Authority Relied on By BIA for The Acknowledgment Process

As described below, the assertion that Congress intended 5 U.S.C. § 301 and 25 U.S.C. § 2 and § 9 to convey to the Secretary of the Interior (Secretary) the legislative authority that the Indian Commerce Clause grants to Congress to create new federally-recognized tribes—*i.e.*, tribes in a political sense—is incorrect.[2]

5 U.S.C. § 301

The relevant provision of 5 U.S.C. § 301, which Congress enacted in 1966—*see* Pub. L. No. 89–554, 80 Stat. 379—provides:

> The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

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[2] DOI sometimes relies upon the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791, as proof that it has delegated authority for administrative recognition. The List Act does not serve as a source of delegation nor does it set any standards. Instead, Congress simply makes a finding that "Indian tribes presently may be recognized by Act of Congress: by the administrative procedures set forth in Part 83 of the Code of Federal Regulations; . . . or by a decision of a United States court." Pub. L. No. 103–454, § 103. In fact, the legislative history of the List Act takes issue with the authority of DOI to terminate tribes, noting that Congress "has never delegated that authority to the Department." H.R. Rep. 103–781, at 3 (1994). Recognizing the need for Congressional delegation to terminate, no such act has occurred to allow for acknowledgment of tribes either. Even if the List Act could be interpreted to be evidence of Congressional acquiescence in administrative acknowledgment, such acquiescence would at most apply to the regulations in effect at that time. Because the proposed regulations deviate significantly from those regulations, no acquiescence would be inferred from the Act.

On its face, that statutory text does not delegate authority to the Secretary to acknowledge new federally-recognized tribes in Congress' stead. In fact, this provision does not even mention Indians. And if Congress did intend the text to convey that legislative authority, the text contains "no standards for the guidance of [Executive Branch action], so that it would be possible in a proper proceeding [in which the Secretary by final agency action creates a new federally-recognized tribe] to ascertain whether the will of Congress has been obeyed." *Yakus*, 321 U.S. at 426. If this provision could serve as a Constitutionally-valid source of delegation, any agency could take any action without regard to Congressional limitations or standards.

25 U.S.C. § 2

Congress enacted 25 U.S.C. § 2 *182 years ago. See* ch. 174, sec. 1, 4 Stat. 564 (1832). As now codified, the text of the statute reads: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." If, in 1832, Congress intended that text to convey to the Commissioner of Indian Affairs (Commissioner) legislative authority to create new federally-recognized tribes in Congress' stead, on its face the text contains no standards that control the Commissioner's exercise of that legislative authority.

In fact, however, Congress intended no such result. The circumstances existing in 1832 when Congress enacted this law confirm a very different intent.

In 1806 Congress created the office of Superintendent of Indian Trade inside the War Department to manage the Indian trading posts that Congress had authorized the President to operate on the frontier. *See* 2 Stat. 402 (1806). In 1816, President James Madison appointed Thomas McKenney as Superintendent. *See Herman J. Viola, Thomas L. McKenney, Architect of America's Early Indian Policy:* 1816–1830 4–5 (1974). In 1822, Congress enacted a statute that ordered the trading posts closed. *See* 3 Stat. 683 (1822). As a consequence, Superintendent McKenney no longer had any statutorily mandated duties. To fill the vacuum, in 1824 "Secretary of War [John C.] Calhoun, by his own order, and without special authorization from Congress, created in the War Department what he called the Bureau of Indian Affairs [BIA]. To head the office Calhoun appointed McKenney and assigned him two clerks as assistants . . . ." Francis P. Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts,* 1790–1834 57 (1979).

Secretary Calhoun's decision to create the BIA may have been a sensible policy choice. But the Secretary's action was without congressional action. For that reason, with Secretary Calhoun's approval, in 1826 Thomas McKenney drafted a bill that he submitted to Congress and whose enactment would create the BIA. *Id*. 58–59. In 1832, Congress enacted the McKenney bill as ch. 174, sec. 1, 4 Stat. 564 (1832); today, 25 U.S.C. § 2.

By 1832 the Secretary of War was distributing annually more than $1 million in gratuities to Indians, operating 54 Indian schools, and as of 1830 had issued 98 licenses to traders doing business in Indian country. As Senator Hugh White of Tennessee, the Chairman of the Committee on Indian Affairs, informed his colleagues when the bill that would be enacted as 25 U.S.C. § 2 reached the Floor of the Senate, "To all these different branches the personal attention of the Secretary of War is now required. The creation, therefore, of such an officer [*i.e.*, the Commissioner of Indian Affairs] as is provided by the bill, be deemed to be indispensably necessary." *See* 8 Gales & Seaton's Register of Debates in Congress, at 988 (1832). Senator White's explanation in 1832 is the accurate description of the intent of Congress embodied in 25 U.S.C. § 2, and the extraordinary power of acknowledging the existence of Indian tribes in a government-to-government relationship with the United States is well outside the scope of that job description.

There is, therefore, no basis to conclude that, in 1832, Congress intended its enactment of 25 U.S.C. § 2 to delegate an employee of the War Department with unfettered authority to decide which groups would be designated as federally-recognized tribes whose members henceforth would have a "government-to-government" relationship with the United States. That interpretation of Congress' intent stretches credulity past breaking.

25 U.S.C. § 9

Congress enacted 25 U.S.C. § 9 *180 years ago. See* ch. 162, sec. 17, 4 Stat. 738 (1834). As now codified, the text of the statute reads: "The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs." If, in 1834, Congress intended that text to convey to the Commissioner legislative authority to recognize new federal tribes in Congress' stead, on its face the text contains no standards that control the Commissioner's exercise of that legislative authority.

Again, however, as with 25 U.S.C. § 2 and § 9, Congress intended no such result. The text of the statute only grants the President legislative authority to prescribe regulations to carry into effect the provisions of an "act relating to Indian affairs." It does not convey the authority to acknowledge Indian tribes, and it certainly does not prescribe any standards. Many Federal laws contain similar grants of rulemaking authority, but such power is conferred for purposes of carrying out the requirements of the contextual law, which serves as the standards to be applied. Section 9 has no such context, and can at best attach itself only to other Acts of Congress "relating to Indian affairs." There is no Act of Congress on tribal acknowledgment; Congress has been silent on this subject. As a result, there are no standards to apply.

43 U.S.C. § 1457

In 1991, AS-IA Eddie Brown published for public comment a proposed rule whose promulgation would revise 25 C.F.R. Part 83 (as 25 C.F.R. 54.1 *et seq*. (1978), the original acknowledgment regulations, had been recodified) in a number of respects. *See* 56 Fed. Reg. 47320 (1991). As authority for the proposed rule, as had been the case in 1978, the rule cited 5 U.S.C. § 301 and 25 U.S.C. § § 2, 9. *See id.* 47324. However, in 1994 when AS-IA Ada Deer promulgated the final rule, *see* 59 Fed. Reg. 9280 (1994), without comment or explanation, she added 43 U.S.C. § 1457 to the list of authorities. *See id.* 9293.

The terms of 43 U.S.C. § 1457 charge the Secretary with responsibility for "the supervision of public business relating to" thirteen different subject areas. One of those subject areas is "Indians." That is the sum of the statute. Nothing in the text of 43 U.S.C. § 1457 delegates to the Secretary Congress' legislative authority to recognize new tribes under Federal law. If Congress did intend 43 U.S.C. § 1457 to delegate the Secretary that authority, the text does not contain any "intelligible principle" for the exercise of that authority with which the Secretary would have a nondiscretionary duty to comply.

Thus, as the preceding discussion confirms, Congress has never spoken on the tribal acknowledgment issue; it has not extended such power to the Secretary, and it has not articulated any standards on principles. As a result, the Washburn Proposal would be in direct violation of the Supreme Court's delegation doctrine.

The Department itself has acknowledged this problem, as it expressed in 1975 when the BIA's Chief of the Office of Tribal Relations informed the Huron Potawatomi Tribe:

> [F]ormer Secretary [of the Interior Rogers] Morton and Solicitor Kent Frizzell were not sufficiently convinced that the Secretary of the Interior does in fact have legal authority to extend recognition to Indian tribes absent clear Congressional action. Nor, even if such authority can be said to exist, does the law appear clear as to the applicable standards and procedures for recognition.

Letter from Leslie N. Gay, Jr., Chief, BIA Branch of Tribal Relations, to David Mackety, Huron Potawatomi Athens Indian Reservation (December 18, 1975).

. . .

[O]n June 16, 1977, the Deputy Commissioner published for public comment a proposed rule whose promulgation would provide one year for Indian groups to petition the Secretary to acknowledge a group's status as a "federally-recognized tribe" and for the Commissioner to approve or deny a petition, subject to review of that decision by the Secretary. *See* 42 Fed. Reg. 30647 (1977). On June 1, 1978 the AS-IA published, again for public comment, a revised version of the proposed rule whose

text differed from the text of the original rule in various respects. *See* 43 Fed. Reg. 23743 (1978). . .[3]

Two months after publication of the revised proposed rule, on August 10, 1978, the Subcommittee on Indian Affairs and Public Lands of the House Committee on Interior and Insular Affairs held a hearing on H.R. 13773 and related bills. *See Federal Recognition of Indian Tribes: Hearing on H.R. 13733 and Similar Bills Before the Subcomm. on Indian Affairs and Public Lands of the House Comm. on Interior and Insular Affairs*, 95th Cong. (1978).

One of the witnesses was Deputy AS-IA Rick Lavis who informed the subcommittee that the Department opposed H.R. 13733 because "We believe the existing structure in the Bureau of Indian Affairs is competent and capable of carrying this [*i.e.*, the task of tribal recognition] out." *Id*. at 22. When Representative Teno Roncalio (D-WY), the Chairman of the Subcommittee, asked, "You feel that you can make recognition for the tribes without statutory requirement of Congress?", Deputy Lavis answered: "We are operating on the assumption that the statutory authority already exists." *Id*.

When Chairman Roncalio then asked for a "quick citation" of that statutory authority, Deputy Lavis deferred to Scott Keep, an Assistant Solicitor, who responded: "Mr. Chairman, it is from a general interpretation of the various laws including the *Passamaquoddy* case . . . and also the Indian Reorganization Act and the way that has been implemented." Mr. Keep also informed the Chairman that "The Department also takes the position that sections such as 25 United States Code, sections 2 and 9, giving the Secretary and the Commissioner of Indian Affairs responsibility for Indian affairs gives him the authority to determine who is encompassed in that category." *Id*.

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Indeed, this very problem was noted as recently as the March 19, 2013 hearing on tribal acknowledgment in the House Subcommittee on Indian and Alaska Native Affairs. In that hearing, Chairman Don Young (R-AK) asked AS-IA Washburn where the Department had received its authority to acknowledge tribes. He was given the same vague answer about general Indian responsibilities that has served as the Department's justification for Part 83 for 35 years.

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Case Law

Over the 36 years of the Federal acknowledgment program, the courts have often deferred to, or made reference to, the Department's role in acknowledging tribes under Federal law. Very few of these cases, however, have involved challenges to the Department's authority to take such action. And, of those cases, only one weakly briefed and distinguishable case has addressed the delegation doctrine.

In a 2003 law review article, Solicitor's Office attorney and tribal acknowledgment expert Barbara Coen states, "[t]he United States Constitution, Article I, Section 8, provides Congress with the power to regulate commerce with Indian tribes, and Congress delegated implementation of its statutes dealing with Indian affairs to the Department of the Interior. Pursuant to this statutory authority, the regulations governing the process were issued following notice and comment rulemaking under the Administrative Procedure Act (APA)." Barbara N. Coen, *The Role of Jurisdiction in the Quest for Sovereignty: Tribal Status Decision Making: A Federal Perspective on Acknowledgment*, 37 New. Eng. L. Rev. 491, 493 (2003). She asserts in a footnote that "[t]he Secretary of the Interior's authority to promulgate the regulations was upheld" in four cited cases. *Id*., n.16. As discussed below, none of these cases confronts the delegation doctrine issue head on.

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[3] In addition, the 1977 proposal required a determination that "the petitioning group *has had* the status of a federally-recognized Indian tribe and should continue to be dealt with as such by the United States." 42 Fed. Reg. 30647, 30648 (June 16, 1977) (emphasis added; proposed 25 C.F.R. § 54.8(a)). . . . Without any explanation, the second proposed rule in 1978 fundamentally changed this premise to an objective of "acknowledging the existence of those American Indian tribal groups which have maintained their political, ethnic and cultural integrity *despite the absence of any formal action by the Federal Government to acknowledge or implement a Federal relationship*." 43 Fed. Reg. at 23744 (emphasis added). The final rule in 1978 also did not include any explanation for this change of position or its legal basis.

***James v. U.S. Department of Health and Human Services,* 824 F.2d 1132 (D.C. Cir. 1987)**

In this case, a faction of the Gay Head Wampanoag Tribe of Massachusetts brought suit against the Department seeking Federal recognition as a tribe. The Court rejected the tribal faction's petition and required it to exhaust administrative remedies provided by Part 83 before seeking judicial relief.

The Court acknowledged that the tribal faction was required to exhaust administrative remedies before seeking judicial relief "since Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations." *Id*. at 1137. In making that statement, the Court cited 25 U.S.C. §§2, 9.

The Court also reasoned that "Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations. Regulations establishing procedures for federal recognition of Indian tribes certainly come within the area of Indian affairs and relations." *Id*. at 1138. The Court never addressed the delegation doctrine, and this statement is, at most, mere dicta because in their amended complaint, and in the briefing at both the District and Circuit Courts, the plaintiff *did not challenge the validity of the regulations. See* Attachment 5. In fact, as made clear by their reply brief in the Court of Appeals, the plaintiffs accepted the 1978 regulations that defined the acknowledgment criteria; they simply argued "the 1978 process was intended to apply only to tribes which could not show prior federal recognition." Reply Brief, at 4.[4] As a result, the decision in *James* has no bearing on the question of whether the Secretary has the delegated power to acknowledge tribes pursuant to intelligible principles.

***Miami Nation of Indians of Indiana, Inc. v. Babbit,* 887 F. Supp. 1158 (N.D. Ind. 1995)**

The Miami Nation of Indians in Indiana challenged the validity of the 1978 Federal acknowledgment regulations on the grounds that Congress did not delegate the authority to abrogate a treaty or terminate a previously recognized tribe. The Court examined whether, in promulgating the 1978 rules, the Department violated the limits that the APA places on Congressional delegations of authority to terminate tribes, not on whether the Department violated the limits that the Constitution places on such delegations of authority to grant acknowledgment.

Merely repeating the government's argument, the Court indicated that "[n]o statute explicitly authorized the Secretary of the Interior to promulgate regulations concerning the acknowledgment of Indian tribes" and noted that "the Secretary relied upon his general statutory authority contained in 25 U.S.C. §§2 and 9 when promulgating the acknowledgment regulations." *Id*. at 1163.

The Court also stated that '[a]lthough the Miamis assert that such authority is "tenuous," they do not contend that the Secretary is wholly unauthorized to promulgate any regulations concerning the acknowledgment of Indian tribes.' *Id*. at 1164. The Court cites the holding in *James* (discussed above) that upheld the Secretary's authority to promulgate the 1978 regulations under 25 U.S.C. §§2, 9. The Court in *Miami Nation*, like the court in *James*, did not confront the legal question whether Congress delegated the authority to acknowledge tribes under clear standards. Attachment 6.

***United Tribe of Shawnee Indians v. United States,* 253 F.3d 543 (10th Cir. 2001)**

The United Tribe of Shawnee Indians of Kansas brought action against the Department of the Interior and the Department of Defense seeking a declaration of its status as a federally-recognized tribe and a declaration that a constructive trust in favor of the Tribe be placed on certain lands.

The Court's discussion focused on whether the Tribe's suit was barred by sovereign immunity and whether, if it was not barred by sovereign immunity, the Tribe was required to exhaust all administrative remedies before seeking judicial relief.

In its discussion of whether the *ultra vires* exception to the doctrine of sovereign immunity applied so as to allow the Tribe's claim to go forward, the Court noted that the doctrine only applies where the government officer *lacked* delegated power.

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[4] Later in their brief, plaintiffs stated they "are opposed to the federal acknowledgment process on limited grounds" not because it lacks underlying authority but "because they believe it does not and should not be applied to a tribe such as theirs which is already federally recognized." *Id*. at 10 (emphasis in original).

Id. at 548. The Court rejected the *ultra vires* exception and found that the Secretary did have delegated power to decide the status of Indian tribes. *Id*. at 549. The Court stated, without elaborating, that the "BIA has been delegated the authority to determine whether recognized status should be accorded to previously unrecognized tribes." *Id*. at 549. As with the other cases, a claim was not made under the delegation doctrine, and the Court did not address the need for meaningful standards. Again, the plaintiff tribal group did not contest the Secretary's authority under Part 83; instead, it simply argued it had been previously recognized and did not need to comply with the acknowledgment rules. Attachment 7.

***Kahawaiolaa v. Norton,* 222 F. Supp. 2d 1213 (D. Haw. 2002)**

A group of Native Hawaiians brought a claim asking the Court to declare the Part 83 regulations unconstitutional because the regulations exclude Native Hawaiians from consideration for Federal acknowledgment as an Indian Tribe. The plaintiffs never challenged Part 83 on delegation grounds. Instead, they argued racial discrimination under the Fifth Amendment because they were precluded from applying for recognition as a result of the exclusion of Hawaii in 25 C.F.R. § 83.1. Attachment 8. The Court dismissed the Native Hawaiians' claim as a nonjusticiable political question.

The Court addressed the delegation issue in an overview of the Federal acknowledgment process but does not discuss the Constitutional issue. *Id*. at 1215. The Court's analysis in this case focused on the application of the political question doctrine to the Federal acknowledgment process, not on whether the delegation to the Department violated Constitutional principles.

***Burt Lake Band of Ottawa and Chippewa Indians v. Norton,* 217 F. Supp. 2d 76 (D.D.C. 2002)**

The Burt Lake Band of Ottawa and Chippewa Indians of Michigan brought suit against the Department seeking Federal recognition as a Tribe. The Court dismissed the Tribe's claim for failure to exhaust administrative remedies. In relation to the delegation issue, the Court simply stated that "Congress authorized DOI and its Bureau of Indian Affairs ("BIA") to regulate and manage all matters relating to Indian affairs under the direction of the Executive Branch . . . Pursuant to this delegation of authority to DOI, BIA promulgated regulations establishing procedures for federal recognition of Indian groups as Indian tribes." *Id*. at 77. The court did not address the issue of whether proper standards had been used for that purported delegation. While the plaintiff made a vague delegation argument in its complaint, the narrow issue was whether DOI could deny acknowledgment to a tribe previously recognized by Congress. Attachment 9. The question of whether DOI could acknowledge tribes on its own accord was not addressed.

***Robinson v. Salazar,* 885 F. Supp. 2d 1002 (E.D.Cal. 2012)**

The only case to raise the delegation doctrine is *Robinson v. Salazar*, 885 F.Supp. 2d 1002, 1034 (E.D. Cal. 2012). In that case, the Kawaiisu Tribe of the Tejon of California brought suit against the Department seeking Federal recognition as a Tribe, title to certain lands in California, and relief from other alleged violations of common and statutory law. The Tribe directly raised the issue of whether Congress' broad delegation of authority to the Department under 25 U.S.C. § § 2 and 9 violated the nondelegation doctrine. The Tribe argued that Congress' delegation of authority, as it relates to Interior's authority to issue the Part 83 regulations, violated the nondelegation doctrine because Congress did not give the Department clear guidelines to follow for determining tribal status. *Id*. at 1036. In rejecting the nondelegation argument, the Court stated:

> This Court does not find that delegation to the DOI to determine tribal recognition violates the non-delegation doctrine. Plaintiffs' citations to generalized legal authorities are inapplicable in light of the vast statutory authority before this Court and including centuries of history and judicial opinions adjudicating and upholding the DOI regulations. Plaintiffs generalities do not demonstrate that Congress' delegation to the Executive, and thereby, the promulgation of regulations by DOI, violate the non-delegation doctrine.

Id. at 1037.

This decision is not dispositive of the delegation argument. It relies principally on *James*, which, as noted above, only addressed the issue in a gratuitous discussion not relevant to the claims in the case. Moreover, the issue is treated lightly in the

pleadings, with a mere paragraph in plaintiffs third amended complaint, and a brief discussion in plaintiff's opposition brief, in both instances raised as an argument against the Federal defendant's affirmative defense that the Kawaiisu Tribe had failed to exhaust its administrative remedies by seeking acknowledgment under the Part 83 regulations. Attachment 10. The Court never points to the standards that it believes satisfy the delegation doctrine; it only assumes that they exist. The Court's decision suffers from the same "generalities" that it observed the plaintiff's argument suffered from.

Over many years, DOI has managed to avoid triggering a meaningful legal challenge to its acknowledgment program under the delegation doctrine because the Part 83 regulations have provided a generally accepted, rigorous, and objective process that has resulted in decisions that adhere to case law precedent and have been consistent with each other. While there is a clear legal infirmity in the absence of statutory basis for the authority to make these decisions, there has been no need to carry the argument forward in a legal challenge. The proposed regulations would, however, change all that. They would result in extreme results that are inconsistent with precedent. The criteria would be so far afield from current Part 83 standards as to illustrate the very problems that the delegation doctrine is designed to avoid—Executive Branch action unfettered by controlling legal principles that results in wild swings in agency decisionmaking untethered by any guidance from Congress or the existence of enforceable standards.

. . .

Mr. YOUNG. I thank you.

I believe my next witness is Brian Patterson.

STATEMENT OF BRIAN PATTERSON, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES, INC. (USET), NASHVILLE, TENNESSEE

Mr. PATTERSON. Chairman Bishop, Ranking Member Grijalva, Chairman Young, Ranking Member Ruiz, members of the subcommittee, if it is true that relationships are paramount and everything else is derivative, as such I look forward to the engagement in the dialog to follow on H.R. 3764, the Tribal Recognition Act.

In addition to my duties as President of the United South and Eastern Tribes, I serve my people as Bear Clan Representative to the Oneida Nation Men's Council, a position I have held for over 25 years. As USET President, I am serving in my fifth term, representing the inter-tribal organization of 26 federally-recognized tribal nations, from Texas to Florida, up to Maine—quite a wide, diverse geographic area.

USET's mission includes ensuring each branch of the Federal Government works to fulfill its solemn obligations to tribal nations. As USET and others have previously noted, the Part 83 Federal acknowledgment process, as administered by the Bureau of Indian Affairs, is vital and is essential to the fulfillment of the trust responsibility. It has been authorized by Congress, affirmed by the judicial branch, and firmly rooted in the U.S. Constitution.

While there are many differences of opinion regarding the appropriate standards of review in the revised Part 83 process, there is widespread agreement within Indian country that the Secretary of the Interior is well positioned to recognize tribes on behalf of the United States.

As such, we urge this subcommittee to consider whether the unique and sacred diplomatic relationship between our respective sovereign nations is best served by the proposed wholesale elimination of the executive branch recognition authority via H.R. 3764.

The government-to-government relationship between tribal nations and the United States began at a point where each recognizes the sovereignty of the other. For this reason, it is important that the Federal Government have in place a credible, non-politicized, and orderly process for determining which tribal nations it recognizes.

USET is deeply concerned that placing sole authority for recognition in the hands of Congress will unduly inject unrelated political considerations into this process. On this fundamental point, too much is at stake for the recognition process to be politicized.

While Federal recognition via an Act of Congress is one way the Federal Government acknowledges tribal nations, it should not be the only way. As this body well knows, critical pieces of legislation, including those of a non-controversial nature, are sidelined or stymied with increasing frequency, due to the nature of the political process.

In addition to concerns related to politics, it is essential to recognize that the U.S. Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to tribal nations. Although Congress has properly delegated authority to the executive branch to make a determination regarding the Federal recognition of tribal nations, the executive branch also has independent recognition authority granted through the U.S. Constitution.

The executive branch has exercised its constitutionally-granted recognition authority in various ways. Long before Congress delegated recognition authority to the executive branch, the executive branch engaged in treaty negotiations with tribal nations. Although the Senate is involved in ratifying these treaties, the executive branch utilized its constitutional treaty-making authority and, therefore, the governmental branch responsible for treaty-making with tribal nations.

The courts have found the executive branch treaty negotiations with tribal nations constitute Federal recognition. Since the era of treaty-making ended, the executive branch has recognized tribal nations through other means such as Executive orders. We urge that you reconsider H.R. 3764, and instead work directly with the Administration and tribal nations to discuss any changes that might improve this important process.

More importantly, we ask the subcommittee to reconsider how it is determining its priorities for Indian country.

Finally, USET believes strongly that all branches of the Federal Government share equally in the Federal trust responsibility, and oppose any effort that fails to fully recognize the obligations and authorities of each.

I invite any and all members of this subcommittee to take the opportunity to come to our tribal nation homelands to discuss our priorities firsthand with us. Thank you, sir.

[The prepared statement of Mr. Patterson follows:]

PREPARED STATEMENT OF BRIAN PATTERSON, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES, INC.

Chairman Bishop, Ranking Member Grijalva, Chairman Young, Ranking Member Ruiz, members of the subcommittee: thank you for providing me with the opportunity to testify on H.R. 3764, the Tribal Recognition Act. My name is Brian Patterson. In addition to serving as Bear Clan Representative to the Oneida Nation Men's Council, I am serving in my fifth term as President of United South and Eastern Tribes, a non-profit, inter-tribal organization representing 26 federally-recognized tribal nations from Texas to Florida and up to Maine. USET is dedicated to enhancing the development of its Member Tribal Nations, to improving the capabilities of these governments, and assisting USET Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes ensuring each branch of the Federal Government works to fulfill solemn obligations to tribal nations.

As USET and others have previously noted, the Part 83 Federal Acknowledgement Process, as administered by the Bureau of Indian Affairs, is vital to fulfillment of the trust responsibility, as well as authorized and upheld by Congress, the judicial branch, and the Constitution. While there may be differences of opinion regarding the appropriate standards of review in the revised Part 83 Process, there is overwhelming agreement within Indian country that the Secretary is well-positioned to recognize tribes on behalf of the United States. As such, we urge this subcommittee to consider whether the unique and sacred diplomatic relationship between our respective sovereign Nations is best served by the proposed wholesale elimination of executive branch recognition via H.R. 3764.

I would like to note that many of USET's Member Tribal Nations' diplomatic relations with the United States were achieved through executive processes, including the Part 83 process. For those tribes who have gone through executive processes, there is no doubt that they were "lawfully" recognized as a matter of constitutional and statutory authority; just as importantly, the process in USET's experience assured that those that were recognized were justifiably recognized as a matter of history and moral right.

The government-to-government relationship between tribal nations and the United States begins at the point where each recognizes the sovereignty of the other. For this reason it is important that the Federal Government have in place a credible, non-politicized process for determining which tribal nations it recognizes. Executive recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a tribal nation. USET is deeply concerned that placing sole authority for recognition in the hands of Congress will unduly inject unrelated political considerations into a process that is at the heart of the Federal trust responsibility.

While Federal recognition via Act of Congress is one way the Federal Government acknowledges tribal nations, it should not be the only way. As this body well knows, critical pieces of legislation, including those of a non-controversial nature, are sidelined or stymied, with increasing frequency, due to the mercurial nature of the political process. A common criticism of Part 83 is the length of time associated with receiving a decision. While H.R. 3764 does include deadlines for recommendations from the Secretary of the Interior, it places no deadline on the introduction of corresponding legislation, should Congress agree with the Secretary's positive determination. Moreover, even if the legislation were to prescribe a timeline, there is virtually no way to assure that a Federal recognition bill would not languish in Congress for months, years, or even indefinitely for reasons unrelated to the merits of a tribe's request for Federal recognition.

In addition to concerns related to the political process, it is essential to recognize that the U.S. Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to tribal nations. This spring, USET, along with eight other tribal nations and tribal nation organizations, submitted testimony for the record of the hearing of April 22 to this subcommittee providing legal validation and support for the Secretary's authority to acknowledge tribal nations. As the testimony notes, Congress has properly delegated authority to the executive branch to recognize tribal nations through 25 U.S.C. § 2, 25 U.S.C. § 9, and 43 U.S.C. § 1457. Like Congress' constitutional grant of recognition authority through the Indian Commerce Clause, the statutes delegating recognition authority to the executive branch do so in broad terms. Many courts have recognized Congress' proper delegation of recognition authority through these broad statutes. Congress, when it enacted the 1994 Federally Recognized Indian Tribe List Act, reiterated its past delegation of recognition authority to the executive branch.

There are currently 566 federally-recognized tribal nations included on the list the Department of the Interior maintains at the direction of Congress. Congress has authority to initiate a government-to-government relationship, but most Tribal Nations did not receive Federal recognition in this manner. Instead, many tribal nations received Federal recognition via the executive branch. The standards the executive branch uses for determining whether an entity possesses sovereign tribal government status for purposes of Federal law grew out of case law, drawing from cases that articulate where tribal nations' inherent sovereignty originated, how they maintained that sovereignty over time, and what their political governing structure must entail.

Although Congress has properly delegated authority to the executive branch to make a determination regarding the Federal recognition of tribal nations, the executive branch also has independent recognition authority granted by the Constitution. The Constitution grants the executive branch authority to undertake diplomatic and administrative actions consistent with Federal recognition. This authority is most clearly granted through the Constitution's Treaty Clause. The Constitution also grants the executive branch the authority to receive and provide ambassadors.

The executive branch has exercised its congressionally-granted recognition authority in various ways. Long before Congress delegated recognition authority to the executive branch, and even before the United States was formed, the executive branch engaged in treaty negotiations with tribal nations. President George Washington entered into and then worked with the Senate to ratify the first treaties in 1789, thereby establishing that treaties with tribal nations would utilize the same process treaties with foreign nations must go through. Before the treaty-making era ended in 1871, most tribal nations had entered into a treaty with the United States. Although the Senate was involved in ratifying these treaties, the executive branch utilized its constitutional treaty-making authority and was therefore the governmental branch responsible for treaty-making with tribal nations.

Courts have found that the executive branch's treaty negotiations with Tribal Nations constitute Federal recognition. The Department of the Interior in making determinations regarding whether a tribal nation is federally recognized has also treated treaty negotiations as indicative of Federal recognition. Also evidencing Federal recognition, and often resulting from treaties, is a Federal reservation created for a tribal nation. In fact, in defining "tribe" in the Indian Reorganization Act, Congress acknowledged that "Indians residing on one reservation" possess sovereign tribal government status.

Since the treaty-making era ended, the executive branch has legally federally-recognized tribal nations through other means. For example, the executive branch replaced treaties with Executive orders immediately after treaty-making ended. When Congress enacted the Indian Reorganization Act in 1934, the Department of the Interior conducted sovereign tribal government status examinations to determine which Tribal entities were eligible for benefits under the Act, thus resulting in their recognition. In 1978, the Department of the Interior promulgated the Federal recognition regulations in order to create a more consistent process for Federal recognition, and it published its first comprehensive list of federally-recognized tribal nations in 1979.

As USET has discussed in testimony submitted for the record of the October 28 hearing, if Congress now attempts to restrict the executive branch's recognition authority through H.R. 3764, that legislation would likely be deemed unconstitutional. We urge that you reconsider H.R. 3764 and instead work directly with Tribal Nations to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that all branches of government share equally in the Federal trust responsibility and opposes any effort that fails to fully recognize the obligations and authorities of each. We welcome the opportunity for tribal nations and tribal nation organizations to work with this subcommittee and Chairman Bishop to address and improve the Federal Acknowledgement Process so that it better reflects our country's commitment to a government-to-government relationship with tribal nations, including as they are recognized.

Mr. YOUNG. I thank the witnesses for the testimony.

Mr. Ruiz.

Dr. RUIZ. Thank you very much. This question is for both Chairman Martin and President Patterson.

First, thank you for your thoughtful testimonies. I appreciate your deep commitment to upholding the integrity of the government-to-government relationships between the United States and federally-recognized tribes, one that we share. This question is for the both of you.

I am concerned that this bill does little to improve transparency or consistency in the Federal recognition process. As you both noted in your testimony, this bill provides really no timeline for Congress to act on the Assistant Secretary's recommendation. Given this fact, many petitioning groups may choose to forego providing their ability to meet the rigorous set of standards in place at the Department of the Interior, and instead go directly to the Chair of the Natural Resources Committee.

By eliminating the ability for petitioning groups to gain recognition through the Department of the Interior, do you think petitioning groups might be encouraged to skip the costly Part 83 process altogether? President Patterson?

Mr. PATTERSON. I think Indian country has become well versed in a process that is not of our own. When we entered into the unique trust relationship with this country, we vested ourselves into a process that governs this relationship.

I think as Part 83 moves forward, USET has no comments on the revisions that are offered. However, we do realize the strength of the process. We do realize that the effect of recognition should take place in an orderly process that is across the Federal Government.

Dr. RUIZ. So, if the Secretary does not have the authority to recognize tribes, do you think tribes would bypass the rigorous system through the Department of the Interior and instead go through the Congress?

Mr. PATTERSON. I think that the executive branch should have authority to recognize tribes through an orderly process.

Perhaps I am not clearly understanding the issue, or——

Dr. RUIZ. The issue is this. Let's say a tribe that is—or a group that legitimately can be a tribe has to go through the cost, the time, the rigorous loopholes that we want the Administration and groups to go through in order to be recognized. When they look at the path of least resistance, and can easily go to a Member of Congress that has affinity with that tribe, would they forego that rigorous process of transparency, and rather, go through the political process?

Mr. PATTERSON. When tribal nations seek recognition and acknowledgment through the Federal Government, namely with the executive branch, there is a process of criteria that needs to be maintained and met; and I think that any other comparative process should meet a basic requirement.

Dr. RUIZ. So if it does not, and there is a path of least resistance, it seems like the tribes would choose to go to the path of least resistance.

Mr. PATTERSON. Ranking Member Ruiz, Indian country should not be subjected to the political whims——

Dr. RUIZ. OK. So this question is for the both of you, as well.

This bill has the potential to allow one vocal constituent from the Chairman of the Natural Resources Committee to convince the Chairman to only allow recognition bills to be heard in the

committee if they include a provision that restricts the petitioning group's ability to game, have land taken into trust, or even their inherent sovereign immunity. By housing the power to recognize tribes solely within Congress, I believe that this bill injects even more unrelated politics into a process that the both of you acknowledge as too political to begin with. We have already seen this with most tribal recognition legislation considered here in Congress requiring a gaming prohibition in order to advance.

Given these political realities, how does eliminating the Secretary of the Interior's authority to recognize tribes prevent the creation of two classes of Indian tribes?

Mr. MARTIN. Thank you. I think we look at this differently. What I think there would be is—a more likely scenario is that Congress would be waiting for the Department to have their analytical design or process to bring forward. And then I think that the process that we would support, and have—I maintain in all of my testimony—is the rigor. We do not want to see any diminishing of that process.

Dr. RUIZ. So, it seems if we go back to the Part 83 and keep the rigor in, that you would be OK with the Department of the Interior using that rigor as criteria consistently with all tribes?

Mr. MARTIN. Well, we have a problem with the Department of the Interior and some of the actions they have taken recently with gaming, with reaffirmation. Tribes or tribal groups that have not passed the seven standards, and then they are asked to come back, that is a problem that the Morongo has. So, that would be our position.

Dr. RUIZ. OK.

Mr. YOUNG. Time is up. Which one of you want to go first?

Dr. BENISHEK. Well——

Mr. YOUNG. OK, Doc, go ahead. That is fine.

Dr. BENISHEK. Thanks, gentlemen. Chairman Martin, can you talk to me about the need for an appeals process in case a potentially-valid tribal petition has been rejected?

Mr. MARTIN. I am sorry, I don't understand.

Dr. BENISHEK. Apparently, there is not much of an appeals process if the potentially-valid petition has been rejected. Do you think that is important, to have an appeal process?

Mr. MARTIN. There is a standard that has to be met. If they cannot meet the standard, then I think they are turned down. And, of course, I was talking about another group that did that, and they were re-invited back to petition again for instatement, I guess, is the word I am trying to find.

So I am not sure the appeal process——

Dr. BENISHEK. Well, I am just considering what if a technical error in the application, or something like that, when they really have a valid claim, but there has been some kind of a technical error in the application process, and they fail because of that, is there no opportunity for correction of that?

Mr. MARTIN. For correction of that? There should be. Another important thing, I think, is that these should be handled in a timely manner. I have heard of applications going 20 years. That is just outrageous. They should be handled in a timely manner, so these groups can go forward with what they are doing.

Dr. BENISHEK. All right, thanks. That is all I have. Thank you, Mr. Chairman.

Mr. YOUNG. You are up.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. Reyes, in your testimony you indicated—I am going to summarize it, and if I do it incorrectly, I apologize—that the state should have—in this case, Utah—a bigger say in a recognition process, given collateral situations, i.e., loss of tax revenue, potential gaming, et cetera that a recognized tribe would undertake.

Mr. REYES. I think that is a fair summary.

Mr. GRIJALVA. OK, thank you. Would you say that that same concept, legal-wise, would apply to land taken into trust for a tribe?

Mr. REYES. Could you elaborate? In what way are you talking?

Mr. GRIJALVA. Well, that is a Department issue now.

Mr. REYES. Correct.

Mr. GRIJALVA. They go through that process. Let's say tribe land taken into trust, it could have the same collateral situations that you brought up, relative to recognition. Do you see this concept extending?

Mr. REYES. Not necessarily, no. I think recognition is a unique issue unto itself, and there are a number of collateral issues. So, no, my testimony was not geared toward issues beyond recognition, sir.

Mr. GRIJALVA. Thank you.

Chairman Martin, let me get to the point, and I appreciate your testimony very much. And the question would apply to President Patterson, as well. In the legislation, there are two things—two points that you made. One, the rigorous process that Interior would take in this recognition process, problems aside that you might have presently with the Administration of the Interior, or the Deputy Secretary, that aside, that that rigorous process would be undertaken, and that, as a consequence, that would become the template in which Congress would then make a final decision as to recognition or not. That would become then Congress' sole—the sole authority would be with Congress, based on the criteria, a rigorous, transparent criteria.

If that situation does not exist in the legislation, that there is no path forward, how would you react to that, if that rigorous process was not the template, that it would be primarily Congress' sole authority to recognize or not?

Mr. MARTIN. I think what we would like to see is a blended type of process that these groups would go through, and that is the Department and Congress, as well. You know, I am going to keep going back to——

Mr. GRIJALVA. Well, as the bill is written—Mr. Chairman, with all due respect—even all the historical, factual work that Interior might do through a rigorous process on behalf of a tribal petition, there is no path forward in the legislation, no time frame, no up or down vote required, nothing. The issue could languish there, as you complain, the 20-year languishing, which—you are correct, that is too long—would be the discretion of an authority of Congress whenever they dealt with, regardless of the process. Don't you think that needs to be part of the legislation?

Mr. MARTIN. Well, I think there is a lot that needs to be part of the legislation, and that could just be one of them.

Mr. GRIJALVA. OK, thank you.

Mr. Patterson?

Mr. PATTERSON. I think oftentimes Federal Indian policy and legislation are not shaped in a manner that is most pro-sovereign. Indian country is part of a process, a system, where we lack the most—we lacked a role in mandatory consent. However, at the end of the day, Indian country must trust the system, a system that fulfills in a manner that is fair, equitable, and consistent.

Does USET believe that Part 83 should be the sole venue? While we may err in preference for use of the Part 83 process, we do not take the position that it should be the sole avenue for recognition. In fact, you, as Congress, currently have the authority to recognize——

Mr. GRIJALVA. Yes.

Mr. PATTERSON [continuing]. Tribal nations, should you desire. And, in fact, as recently——

Mr. GRIJALVA. Independent of Interior.

Mr. PATTERSON. Yes, yes. What I have heard my tribal leaders speak of is the due process which—the Administration process would include experts such as ethno-historians, genealogists, anthropologists, other technical staff to help it come to a determination.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. YOUNG. Thank you.

Mr. BISHOP. Yes, first of all, let me thank all of you for being here. I do appreciate your time and effort to be here.

Mr. Reyes, I would like to have introduced you as a constituent, but you are not. I am a constituent of yours, so you control me. I do have a couple of questions for you, Sean, if I could start off with that.

One of the other panel witnesses here has written in his testimony that if Congress attempts to restrict the executive branch's recognition authority, it would likely be deemed unconstitutional. All right, you are the top attorney from the state. Do you have concerns about the constitutionality of the proposed legislation?

Mr. REYES. No, sir. I do not. I think clear constitutional precedent is delegated power, and well within the purview. And the Supreme Court has interpreted very clearly, in no uncertain terms, that Congress has plenary power, in terms of its relations with the Indian tribes. So, I do not have any constitutional concerns.

Mr. BISHOP. OK, thank you. Let me go on with that. You also said that tribal recognition has collateral consequences that carries, which is one of the reasons Congress should be in a better situation to do that, "where the several states"—I am quoting from you—"have direct representation to debate and decide such matters, rather than the executive agency, where the several states do not." Can you elaborate on that particular point?

Mr. REYES. Sure. Let me say, first of all, from the perspective of my colleagues, the other attorneys general that I work with, the states have a—how should I say it?—a cautious view of all Federal bodies, given some of the Tenth Amendment tensions that we encounter. But choosing between an unaccountable subsidiary of the

executive branch versus a body like Congress, that has direct accountability to the citizens of the states, I think the choice for us is the latter.

Again, we believe that——

Mr. BISHOP. So what you are saying is the DOI, BIA have not only the ability to ignore local governments, they have a propensity to do that?

Mr. REYES. That has been our experience in the past. And we have more trust in this body, again, in terms of our experiences with a number of different issues.

Let me, if I could, clarify something, Mr. Chairman, because I think Congressman Grijalva asked an important question, and maybe I was not understanding it correctly immediately, and maybe I misspoke. In part to his question would this extend, for instance, to transfer tribal lands into trust, I think it would affect that in one sense, that the predicate to any of those issues is recognition, to begin with.

So, if our premise is that recognition is best decided by Congress, then I guess it would follow that, subsequently, any other issues that stem from recognition would be subject to the same analysis.

Mr. BISHOP. OK, Sean. One thing you have to learn in this place is to answer his questions on his time, not my time.

Mr. REYES. Oh, I apologize.

Mr. GRIJALVA. But it was a good answer. Thank you, Mr. Chairman.

Mr. BISHOP. He will ask the dumb questions all the time. I appreciate that. But let's——

Mr. REYES. It is the lawyer in me. I have to just——

Mr. BISHOP. Yes or no, do you feel comfortable that the other states' attorneys general, both parties, would feel comfortable with your recognition of where the role of federalism plays?

Mr. REYES. I have consulted with attorneys general from both parties, but I do not want to say that I represent every single attorney general here. I am not in a representative capacity.

Mr. BISHOP. That is good enough.

Chairman Martin—there will be another round; I will get to the rest of you here down the row. I know you do not speak for all of Indian country. BIA claims they do, but no one speaks for all of Indian country. But can you characterize what you have heard from other tribal leaders who follow this recognition issue on the new Part 83? I mean is it fair to say tribal leaders want the procedures fixed, they do not want the criteria to be relaxed?

Mr. MARTIN. I think that is fair to say. I have not spoken with all tribal leaders in California, but there has been some conversation. And to almost every one that I have talked to, they do not want to see it relaxed at all, any more than I would.

Mr. BISHOP. See, one tribal leader sat in my office one time and said, "I don't care what the game I have to play is, I just want to know what the ball looks like."

Mr. MARTIN. Yes.

Mr. BISHOP. That is the purpose of what we are trying to do here. When all of you were talking about how the process and the procedures are important, that is why it has to be spelled out, so it cannot be changed.

One of the problems we have in Part 83 is not only has the Department established that, they have given themselves the power to waive that when they want to, which means no one knows what the ball looks like. That is what we are aiming at here. Contrary to a lot of things that are said about it, we want a firm process, a process that will go through it.

Mr. Chairman, I do have other questions for the rest of the panel here, but I only have 7 seconds to do it, so I will wait until I get another shot at this. I yield back.

Mr. YOUNG. Mr. Sablan.

Mr. SABLAN. Thank you very much. Good morning, everyone, and thank you, Mr. Chairman, for holding this hearing.

I must say that this is all new to me. While I do know of some individuals back in the Northern Marianas who tell me that they are part of a particular Indian tribe, Indian nation, there is no recognized tribe in the—but my selfish reason for trying to understand this relationship is—do you see those five flags up there, well, four of those flags are territories and a commonwealth that is managed or administered, in part, by the Department of the Interior, an office within Interior.

In my 7 years in Congress, I have learned that appointed officials and bureaucrats have taken it upon themselves that they know better what is good for the people of my district, for example, than their elected representative, and that the board that Mr. Patterson mentioned—mandatory consent? I mean I think an election gives consent of the people to whoever they choose to represent their interests in Congress and, from Congress, the Federal Government.

But then we have appointed officials who think that they know better what is good for, I know in my case, the Northern Marianas. I am trying to learn here if that is the same relationship that Indian countries and Indian tribes are having with the Department of the Interior. If it is similar to what we are experiencing right now, then you guys have big problems on your hands, because I know I do.

The Office of—that is supposed to be our chief advocate, is consulted by almost everyone throughout the Federal Government, executive branch, and only—for those agencies to come up with decisions that we find to be really—you know, we read about them in the papers. So why are we here, when—and it is unfortunate. It does not bring progress, it does not move us forward. It creates division and it creates, many times, a suspicion of what the Federal Government is doing to the territories.

So, I am trying to learn if there are similar processes that the Indian countries or Indian tribes are going through that we are going through also in having an office that is responsible to be the chief advocate of the territories, when they are not.

Thank you, Mr. Chairman. Thank you for this hearing.

Mr. YOUNG. Thank you.

Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. Of course, for tribes, this is probably the single most important issue in the recognition for already recognized tribes, or the effect that new recognitions may or may not have on existing ones and their way of doing business. So, indeed, if there had been a more consistent handling of

this, I think, from the BIA and through the Administration, then we probably would not be having this bill, or a need for a bill like this today.

There is a lot of frustration with timelines. One of the panelists talked about 20 years waiting to hear back. So, indeed, groups that have valid cases for recognition might hear immediately, they might not ever hear back from the BIA. So, consistency is part of what is needed here. And Assistant Secretary Washburn, in a previous hearing, said he intends to continue to allow previously-denied tribes a chance to apply and apply again. It kind of gets to the point of what are really the rules here.

Again, I am disappointed that some of the talk in this and previous hearings is like it is all politicized—because of Congress, who has the most accountability in the House of Representatives, we stand in front of the American people every 2 years in our districts, and have accountability. So, if people want to say that the Constitution and having duly elected officials making the laws through the constitutional process is too politicized, then I guess that is giving up on the American way of doing things.

I would be shocked, Mr. Chairman, shocked to hear that politics would be coming out of the Administration or the BIA. So, I think we ought to lay that aside, and see what is the best policy here, is that consulting with the BIA, and the vetting they do—the House can make good decisions here.

So, Chairman Martin, welcome. You had alluded in your testimony earlier concerns you had that, indeed, with the existing standards for recognition, that they are moving the goal post, so to speak, on that re-petition of application over and over again, that under new or lesser, laxer standards, the BIA could be giving more recognition out under standards that were not consistent with before. You mentioned that.

So, can you talk about how you feel that would affect Indian country, in general, or your tribe, specifically, if you wish?

Mr. MARTIN. Well, I do not like to use so much the term "dumbing down," but if the standards are dumbed down in any way, I do not think that looks good for the tribes and our ancestors, when they were originally set on these reservations throughout the country, and they had to go through a strict—maybe sometimes forced on them—application or process that they became a reservation.

The tribes were governments before first contact with the Europeans. We had trade, we had commerce, and they lived very well within that. I think now if you take and try to change those standards that have been in place for all these years, it does not take into consideration all the things that these tribes have gone through over the years.

Now, to change that, make it easier for a tribal group to get recognized—and I mean that respectfully—I am sure there are groups that should be recognized, but a tribal group that has not been recognized since 1900 or 1934 is relatively close to today. And, 1789 I know is a date that seems to be talked about, but we pre-dated that, as well.

Mr. LAMALFA. Mr. Chairman, under previous recognitions or re-recognitions, much documentation was required, and over a long

period of time for tribes to come up with some of this documentation.

Now, again, my understanding of the newer way of doing things is that there be much larger gaps in the documentation filled in by I don't know what. Do you want to comment on that?

Mr. MARTIN. Well, yes. The whole process that seems to be where we are at is—Morongo would be opposed to. Any of these things, again, that dumbs it down, we are going to oppose.

Mr. LAMALFA. Yes. So a previous set of rules, more stringent than the newer set, is really not fair to the ones that went through the right way, is it?

OK, Mr. Chairman, I will yield back. Thank you.

Mr. YOUNG. Mr. Denham.

Mr. DENHAM. No questions.

Dr. RUIZ. Yes, yes. So my understanding here is that the old process was broken. Throughout the years, Congress, through numerous hearings, complained and urged the Administration throughout different administrations to fix that process. So the Administration currently created a new process. There are some legitimate concerns about perhaps consistency, reaffirmation, second chances, weakening some of the processes.

However, this bill takes that old process and puts it solely as a recommendation, but does not require any of these characteristics to be fulfilled in order to be federally recognized, just like Congress has the full authority to recognize tribes, and ultimately can recognize any tribe they want to since the beginning of our Constitution.

So now, in terms of the policy, how will this bill create consistency, when there are newly elected folks every 2 years? How will this bill create transparency, when those conversations are done between staff and tribes and non-tribal members weighing in on whether tribes should be recognized or not? And how does this bill promote an evidence-based, scientific framework or process in which decisions are based on that are required to be based on those?

Can anybody elaborate how this bill will actually improve consistency, transparency, scientific-based decisions?

Mr. MULLANE. I am going to make a strange comment. I do not think the old system was broken. It was not administered correctly, and I will point out how.

One, BIA was understaffed and under budget. A person would submit a letter of intent, and not submit a completed application, and wait 20 years, complain about it, and hope some miracle would happen.

I am of the opinion that you need what the old system had—it was a process—due process, as I called it, balance and checks—and that means somebody submits a letter of intent, an application, fills out the application, BIA goes and reviews it.

In addition to what has been talked about, I would like also third parties, interested parties, to be reinstated so they get involved with the process as it goes along, and not have an end comment that, at that point in time, cannot be followed. Then——

Dr. RUIZ. So my understanding here is—because this discussion is going back to what we would like to see changed, but——

Mr. MULLANE. No, I am—yes.

Dr. RUIZ. But——

Mr. MULLANE. I am saying that I support this bill. I support it with the type of comments that I am making.

Dr. RUIZ. But so far, this bill, in and of itself, does not provide more transparency, consistency, or scientific-based decisionmaking, the way it is written.

So, my question would be, if we would go back to the old process and make some modifications that do not weaken the system, that creates a firm codified process of criteria to be recognized——

Mr. MULLANE. In law.

Dr. RUIZ. And let's say the personal relationships with the current administrations are gone, we have a whole new era, a whole new time, a whole new decade——

Mr. MULLANE. You know——

Dr. RUIZ. If we codify those decisionmaking, scientific-based criteria that will remain throughout the years, and create consistency with transparency, would that be an option?

Mr. MULLANE. That is what I am getting at.

Dr. RUIZ. So, yes.

Mr. MULLANE. I feel that the old criteria, which had interested parties, which did have an appeals board, and did allow people to get involved as they went along—but again, the——

Dr. RUIZ. So it sounds like we actually have a third way. We actually have a path that we can move forward to find a solution that will meet both the tribes' interests and also the Chairman of the Natural Resources Committee's and this subcommittee's interests, as well, which is—instead of completely eliminating the Secretary of the Interior from recognizing tribes, let's go back, change the Part 83 process, codify through law the rigorous, scientific-based criteria, so that there is no other choice from the Department of the Interior for recognizing tribes, other than that criteria.

Mr. MULLANE. But that leaves all the responsibility, interpretation, and application with one party. That is why Congress should be involved to ratify what the BIA acknowledgment technical group researches, finds, and recommends, and still have the Interior appeals available, in case somebody at the point in time when you say, "We have made a decision"—interested parties or others could say, "No, I want this looked at again." Right now, if you leave it all in one house, you are not going to fix the problem. And my testimony clearly stated that.

Now, if you take and eliminate the BIA——

Dr. RUIZ. So——

Mr. MULLANE [continuing]. Which——

Dr. RUIZ. In terms of your——

Mr. YOUNG. Time is up right now.

Dr. RUIZ. Thank you very much.

Mr. MULLANE. I am sorry.

Dr. RUIZ. That is OK.

Mr. YOUNG. Mr. Gosar.

Dr. GOSAR. Sorry about jumping in here. We have three different hearings at the same time. Mr. Mullane, you said in your testimony that your town participates in the acknowledgment process run by the Department of the Interior under Part 83, both in the review of petitions and the recent rulemaking—you touched on it,

but can you quickly elaborate on what your experience was during this process, and what recommendations you have to improve the tribal recognition process? I know you highlighted a little bit here, but I wanted to give you a little more time.

Mr. MULLANE. OK. One, you have to properly staff BIA, and you have to give them the budget. There has to be a timeline given when the person sends a letter of intent, that he submits an application, and then the clock starts running, and not wait 20 years and play politics or try to get it passed.

This criteria that you presently have and enforce is weaker than the old one, or this one that we are looking at here. You should not relax it at all. You should not limit the third party or interested parties, and they should be allowed to be involved as they go on. As in my case, we had substantial information and research available to contribute that the tribes or BIA were not paying attention to.

The petitioners do, under the existing—not in the old, but somewhat on this—have an advantage. Those that have been rejected should not be allowed to reapply. They failed.

The benefit of factual findings by BIA, the appeals process, and Congress to ratify is a due process that means nobody is going to have all the power. If you leave the research BIA group alone, they have proven they have done their job, they can do it.

You should not have a time limit of approval if it is a real hardship, and the tribe just does not have the information, or it is incorrect, or whatever. At some point in time there has to be a determination. You submitted a letter of intent. You cannot comply with the application, you've got a warning, then you are rejected, and you are off the list. Go to somebody else.

Some of these people have been on there, like the Paucatuck Eastern and Eastern Pequots. They complained, "We have been on there 25 years." They never completed the application. So it was a false complaint.

Congress, from what I have heard and been told and read, has not delegated the authority. They should be the final one that has the say that ratifies what BIA has recommended, unless there is a flaw in their process or other information that has come up. But if it goes through a proper process and sequence, and there is no political meddling, those things will be few and far between.

I think that this bill, with a few modifications, with BIA doing their share, appeals courts being available, interested parties being involved, and the transparency of that—i.e. anything that comes in gets distributed to your Web site, put up there so everybody knows who is doing what, where, and how.

And unless you have a balance system—in my town, I am a selectman, I do something. I have to go to the board of finance, and then I have to go to the town meeting, and I have to get an affirmative vote. That is a balance and check. The old system did not have the balance and checks. The one that Mr. Washburn put forward does not have the balance and checks, eliminates the interested parties, eliminates the appeals process, and it is doomed for failure.

Dr. GOSAR. Let me ask you a quick question. Do you think the Secretary of the Interior has the legal authority to acknowledge Indian tribes? Point blank, yes or no?

Mr. MULLANE. No, they do not have the authority to recognize——

Dr. GOSAR. Attorney General Reyes, great to see you. Are you aware of any U.S. Supreme Court ruling, or bills passed into law, that prompted the issuance of this new Part 83 rule?

Mr. MULLANE. Say that again, sir, I——

Dr. GOSAR. No, I am asking the Attorney General from Utah.

Mr. REYES. I am not, sir.

Dr. GOSAR. What is that?

Mr. REYES. I am not familiar with——

Dr. GOSAR. And you have done extensive findings throughout and up currently?

Mr. REYES. That is correct. Our office, and other offices, in preparation for this.

Dr. GOSAR. You find that very unusual?

Mr. REYES. I do. I do not know what would have spurred that, other than, again, perhaps political interests.

Dr. GOSAR. Well, maybe it is because we have also had comments about the treaty application in the United States and other findings, that you cannot pass something to Congress, so we will just bypass Congress. That seems like that is the M.O. of this Administration.

Mr. REYES. That has been an overarching concern of ours in a general sense, sir, yes.

Dr. GOSAR. I thank the gentleman, yield back.

Mr. YOUNG. Mr. Chairman?

Mr. GRIJALVA. Thank you very much, Mr. Chairman.

Again, President Patterson, the factors in a rigorous process for recognition: science, fact, history, genealogy, and proof toward that end before recognition can occur, and we have also heard about collateral consequences at this hearing. I am assuming those can be everything from a revenue issue, non-tribal opposition, not in my county, not near my town, opposition, opposition to gaming.

The non-collaterals then begin to carry significant weight in the discussion about recognition, as I see it, because the process then becomes totally political in the sense that Members of Congress—a Senator could put something on hold for eternity, as we have seen. A hearing could not be scheduled, as we have seen. There is no time sequence to the legislation, there is no due date on when a decision would be made.

Tell me how those two forces, the collateral consequence versus the process that Rule 83 and the changes that have been made, are trying to address, and how do you see that?

Mr. PATTERSON. As sovereign governments, our relationship with the United States depends on a certainty within the process that is used to govern our relationship. I would say making Congress solely responsible for the recognition of that relationship subjects the sacred bond and the sacredness of the trust responsibility to the whims and instability within the 2-year elective cycles.

I further acknowledge and extend, as our Federal partner, you are obligated to fulfill the sacred duty, as elected representatives

from your state, and we acknowledge and recognize your role within state rights and interests. However, when you swear your oath of office, as Representative Cole recently reminded Congress, that the U.S. Constitution—you are swearing your oath to tribal sovereignty, to uphold and protect it.

USET is not opposed to improving a process. We are not—look, I live in New York State. And within the tribal nations that have inhabited the land since time immemorial, we have had many, many issues that come within our local communities, within local governments, state governments, as well as Federal Government. We know that there are three sovereigns within this land, and we must find ways to work together.

In fact, there are many, many examples that demonstrate abilities to reach agreement with other governments. My nation in New York State recently came into a historic agreement which resolved all the differences within the local governments, the local communities, the counties, and the state.

However, it is the unique trust relationship that exists between the United States and our respective tribal nations. And states are not necessarily concerned with promoting or protecting our inherent sovereign authority. So, we look to this body to fulfill your duty and your sacred oath of office.

Mr. GRIJALVA. That is the mission creep that worries me as we go through this legislation, in that you get to the point where you have diluted the government-to-government relationship, the trust relationship, and then you have many collateral entities having a say as to what happens and does not happen, in terms of that decision. That worries me in the legislation.

I just want to point out that forced relocation, landless tribes, allotments, broken treaties, forced assimilation, those were all within the purview of congressional authority, as well. And I would suggest that a third, independent look that is rigorous, that eliminates influences is something this legislation needs to look for.

I yield back, Mr. Chairman.

Mr. BISHOP. Mr. Chairman?

Mr. YOUNG. Yes?

Mr. BISHOP. If I might, again, Mr. Martin, let me come to you the first time.

It appears that the Department is allowing a petitioner that was denied acknowledgment under previous Part 83 rules to reapply under the 2015 rules. Isn't that contrary to what the Assistant Secretary's new rule would be, that no group previously denied could reapply?

Mr. MARTIN. It appears to me that that is in conflict with what the Secretary had said——

Mr. BISHOP. So, for you——

Mr. MARTIN [continuing]. By allowing this person or this group to come back again and again.

Mr. BISHOP. So, for you and Mr. Mullane—is there anything that would stop a future assistant secretary from revising the Part 83 rule again in order to allow another petitioner that was previously denied to have re-recognition or reapply? Is there anything that would allow a future secretary to change the rules again to allow that to take place, currently?

Mr. MULLANE. Well, you have the branch acknowledgment that looks at the technical data. Upon completion of the technical data, they will go through—and I am going to use the seven criteria.

Mr. BISHOP. But let me go specifically to what we are talking about. If already under this rule they are re-allowing, renegotiating people who have been denied, is there anything in what we are doing in the status quo within the Department of the Interior that would stop a future assistant secretary from going through the same process and changing the rules again to allow somebody who had been denied to reapply?

Mr. MULLANE. There is a solution to that. Congress passes the regulations into a law, which they must follow. Therefore, if they have not followed the law, and they are using their own regulations, and I want to say abusing them, no, you are not going to stop them. But it is going to be quickly determined, because the branch of acknowledgment is required to sign off, and what the BIA secretary says does not matter.

Mr. BISHOP. All right, thank you, and that is what we are trying to do here.

Mr. MULLANE. OK.

Mr. BISHOP. In the legislation—Sean, or Attorney General Reyes, look. In 2002, the Interior Inspector General issued a report, and he said that he told his experts that acknowledgment decisions are political, and he was not talking about Congress, he was talking about BIA. So, since it appears the political branch understands recognition is a political matter, would you agree that it is more constitutionally proper for that recognition decision to be made in Congress?

Mr. REYES. Yes.

Mr. BISHOP. That was simple enough. All right. Then you can answer his other question, if you want to.

Now, what—I am sorry, I was joking. It was a joke.

Mr. REYES. No, I can elaborate. Clearly, there are politics all around, and to pretend that there is not because it is the executive branch exercising its prerogative is, I think, naïve.

Mr. BISHOP. Thank you. To the witnesses, unless you want to contradict anything I am going to say right here, we have talked about the significance of having a process established so that it does not change. That is what the bill is attempting to do. We have talked about a timeline here, which I understand.

But you also brought up the fact that sometimes those timelines can have inadvertent consequences that you do not want, in addition to which there is no way to enforce a timeline. I mean we have timelines that the Department of the Interior shall, within 3 years, do X. And if they do not do X, there is nothing you can do about it. We can also take away funding, so they cannot do X, even if we want to. So a timeline is problematic.

We have talked about how BIA should have a review process, which is what the bill actually wants to do. That review process should be there before a final decision should be made. But, if there is going to be a government-to-government relationship, that only happens after somebody is recognized officially. What I am trying to do here is find out a way.

So, I appreciate what you are saying, I appreciate the input. You have offered some of your opinions on the new Part 83 rules, especially as it relates to third party, to the appeals process. I think we should look at that in much greater detail. But a lot of the decisions, the statements that have been made here, I think, are leading us to the general point, that it is Congress' responsibility. Someone needs that final say. But, it needs to be based not on flippant, arbitrary decisions and rules that can be changed at someone's whim, but by what is legally established through statute. And that is what we are after here.

I appreciate the concepts, your coming in here. I appreciate you being here. I have enjoyed your testimony. And I will yield back, then.

Mr. YOUNG. Thank you, Mr. Chairman.

Dr. RUIZ. I will just make some quick—nobody is denying the constitutional authority of Congress to recognize tribes. That is in existence right now. And there have been precedents and legal precedents that also recognize the authority of the Department of the Interior to recognize tribes.

This bill does not add transparency, does not add consistency, does not add scientific-based, does not make it less political than what we already have. And if Congress believes—and we do—that it should be the one to recognize tribes, then my question would be why has there not been a tribal recognition bill that has passed Congress in over a decade, despite the existence of pending legislation recognizing several tribes that are considered legitimate and non-controversial, two of which our committee heard testimony on earlier this year?

So, to think that Congress would expedite and shorten the process with the current dysfunction that exists is not something I would really put all my eggs in one basket on.

This bill, in and of itself, without any changes, I have yet to hear how it would add transparency, consistency, or a scientific-based decision, or even a timeline, or how it would speed it up.

So, my suggestion, and the solution, would be—let's codify the criteria, make the changes from the old, broken system that we dislike to begin with, not adopt the disliked system into recommendations, but let's codify a new and improved system that we can all agree on that is rigorous, that does not weaken the criteria—right?—so that the Administration can have a more scientific-based approach, objective approach, less political, and yet still keep Congress' authority, through their own process, to recognize tribes, as well.

Mr. BISHOP. Will the gentleman yield for just a second?

Dr. RUIZ. Absolutely, Chairman.

Mr. BISHOP. That is what we are trying to do with this thing. But, if you remember, the last time we had a witness here from the Secretary, I asked him, if we did all of that, would he still support the bill, and the answer was no. They wanted the power.

I actually agree with what you are after. I want to do that. If you have specific suggestions on how we can improve the bill to do that, I am all for it, we will take it to the Floor and do it right there. That is what I want, but the issue is, let me get some specifics with that.

Dr. RUIZ. So I guess I reclaim my time. The fundamental difference here is whether or not we will allow the Department of the Interior to recognize tribes.

Now, what we are looking at are two processes. One is a very rigorous, tedious, time-consuming process that is scientifically based, an objective that we could create with congressional law, but still allow the Department of the Interior to ultimately decide. We can even include input from a committee of Members of Congress, a bipartisan committee, versus only allowing the process which occurs in Congress, which we know is not as scientific-based, not very consistent, not very transparent, and more political than the Department of the Interior's approach.

I think the fundamental question is——

Mr. BISHOP. Are you willing to yield again?

Dr. RUIZ. Can we put these processes in place so that tribes can have an option and not just completely be at the whims of this committee?

Yes, I yield my time.

Mr. BISHOP. All right, and this will be the last comment I make on this. And I am sorry we are cutting you guys out, and you are supposed to be here, testifying; but be happy, listen.

That is exactly what I am talking about, except the premise from which you started. These guys have all given you examples of how the present system with the Department of the Interior has not been transparent, has been politicized, has been reviewed, has had the opportunity of having a change at the whim of the Department. The Department is as political as any other institution.

So, as long as the last say is in Congress, which is legally where it ought to be, and legally where it is, involve the BIA—that is what the bill does, it tries to involve the BIA in the process of going through the criteria, but we list what the criteria is, so that they make recommendations to us, and we make the decisions.

But if you allow the decision to be made in the Department of the Interior, all of a sudden you do what happens in the 2002 report: it becomes a very politicized process there. So, you are not going to get rid of the politics. But the transparency is not necessarily in the Administration. The transparency is when it comes here in a political process, where we do things in an open committee meeting, and you actually have to be responsible for it.

I am sorry, Mr. Chairman, you are getting antsy. I am done. I was done several minutes ago. Just shut me off and close it down and we are——

Mr. YOUNG. I want to thank the witnesses. I hope everybody understands—and I do want to say this to my Ranking Member—this is a hearing. I think we made some progress, because I do not think the system—Is anybody totally happy with the present system? Raise your hand.

Mr. MULLANE. The——

Mr. YOUNG. The present system. Are you totally happy——

Mr. MULLANE. The present system, I think, is too young to get much feedback, but——

Mr. YOUNG. I mean—see, my problem—you must understand this. In fact, I am going to ask my staff, and they will not like me.

The last hundred years I am going to find out how every tribe was recognized, and see where the consistency is. There is none.

The Secretary came to my state and made 228 tribes by a stroke of the pen.

Mr. MULLANE. OK.

Mr. YOUNG. That is not the way it should be done, and I am not going to have that type of thing happen again.

Mr. MULLANE. Right.

Mr. YOUNG. It is not fair to the tribes, it is not fair to the states, it is not fair to attorney generals.

Mr. MULLANE. Let me——

Mr. YOUNG. I am not asking you a question.

Mr. MULLANE. OK.

Mr. YOUNG. Just keep that in mind. I am going to suggest that each one of you have some ideas, and maybe you would like to write a little paragraph. We are going to improve this system. There is going to be consistency. Congress is still going to play its role. And there is just not going to be willy nilly, have different tribes recognized by different secretaries that, very frankly—and, by the way, it is interesting, even the Secretary of Indian Affairs told his career experts in the branch of acknowledgment and research, "Acknowledgment decisions are political."

There is nothing not politics in what we do, our side or the BIA. You are not going to get rid of that. Transparency is transparent so we can get it through this House, not through the agency. Because every time when I have gone through a—they have been rejected. Another tribe has done exactly the same as the people who submitted. One side is rejected, the other is not, and no justification.

So, we are going to solve this problem. I think it is a problem. That is going to be your role.

Another thing, I believe, Mr. Patterson, you said in your testimony that H.R. 3764 is likely to be unconstitutional. In your opinion, were previous actions taken by Congress to restrict the executive branch recognition authority also unconstitutional?

Mr. PATTERSON. Sir, I think to suggest and interject verbiage such as "legally," suggests that something illegal has happened. For the April 22 hearing, the Obama administration's Part 83 revisions and how they may allow the Interior Department to create tribes and not recognize them, the suggestion that they are creating something suggests something illegal is going on. And whoever came up with that verbiage, in my opinion, should firmly be held accountable to those words——

Mr. YOUNG. But you have——

Mr. PATTERSON. Words are powerful things, Chairman.

Mr. YOUNG. You have not answered my question.

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. The second thing I want to ask you, in your statement you give an example—the executive branch's recognition is unconstitutional. For example, the Act of June 7, 1956, Congress restricted the Department from recognizing the Lumbee Tribe. Do you think this restriction is an unconstitutional infringement on power of the executive branch to recognize the Lumbees?

Mr. PATTERSON. I will answer the question in this regard, in our November 12 submission—I am not a lawyer, I cannot sit here—I can tell you what my ancestors did to influence the Constitution, which you all recognized the Iroquois contribution to the democracy of this country.

I am not a constitutional lawyer, but I will say please infer to our November 12 written testimony. We answer that exact point in the manner in which Indian country has developed its own subject matter experts to meet the demands of Indian country participating in this system that is not——

Mr. YOUNG. Are you happy with the present system?

Mr. PATTERSON. All systems can be improved, sir.

Mr. YOUNG. That is what we are trying to do.

Mr. PATTERSON. All systems can be improved.

Mr. YOUNG. I suggest, respectfully, that you and each person at that table give us some suggestions.

Mr. PATTERSON. We would welcome that opportunity to further engage in dialog.

Mr. YOUNG. And that is what we would like to have.

Mr. PATTERSON. Thank you, Chairman.

Mr. YOUNG. Mr.—I cannot see your name tag. Go ahead.

Mr. MULLANE. Me?

Mr. YOUNG. Yes. Mr. Mullane.

Mr. MULLANE. I think one of the problems is the Assistant Secretary of the Interior, BIA, is an inconsistent element in this. That should be taken away from and possibly given to a career individual who runs the acknowledgment group. There are two categories. I want to say there is one that is working on finished petitions, going through the process and review, and trying to keep a schedule. Another one is where, when a person says, "I want to submit a letter of intent," well, before you do that, do you have a draft 80 percent complete of your petition, so we can review it?

To give you some indication that—you are 100 miles away, and you don't stand a prayer, OK? Because there has to be the—sorted out for those that sit in the system for 25 years, and waste the technical people's time. OK?

If you do not like a career politician being appointed, then maybe it is a 3-panel or 1-panel judge, depending upon the seriousness of the confrontation on that. This bill has a better foundation to build off of than the present system by Mr. Washburn. I would like to take you up on your offer and send some of the things in that we think should be added to this.

As far as the political aspect of BIA, that you have observed and I have experienced, there has to be a restructuring in regard to who that person is, and he cannot influence the technical people's research, review, and reports. You cannot have that. That is like saying you are going to go to one doctor, who says you need a brain surgery, and this is how it goes—they refer you to a dentist to do it. You do not do that.

So that is brief, but we will take you up on the offer, and we will send you some things. I do like this bill, I would like you to work off it. It can be improved and get there.

Mr. YOUNG. This is my intent—to make things clear, more positive, consistent. Each one of you has a point of view, and I am

serious about accepting your help. But having it exist as now being offered, and even the past, it does not fly.

So, I am going to ask you each respectfully, come to us, we are writing a bill. This is what hearings are all about. It is not to tear down something, it is not to do it differently. I want to take your help and put it in the business. You are the stakeholders, that is the reason we had this hearing.

I want to thank the Chairman for requesting it. We had the government last time. This time we had the stakeholders.

Mr. MULLANE. I look forward to the opportunity.

Mr. YOUNG. Thank you, and with that, adjourned.

[Whereupon, at 12:38 p.m., the subcommittee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

- January 21, 2016, Alan Titus, Rob & Ross, Testimony submitted to Chairman Young regarding H.R. 3764. 3 pages.